CLERK'S COPY

663307

Vol. I

TRANSCRIPT OF RECORD

(Pages 1 to 615)

Supreme Court of the United States

OCTOBER TERM, 1944

No. 574

THE STATE OF ALABAMA AND PUBLIC SERVICE COMMISSION, THE STATE OF TENNESSEE AND THE RAILROAD AND PUBLIC UTILITIES COMMISSION OF THE STATE OF TENNESSEE, COMMONWEALTH OF KENTUCKY AND RAILROAD COMMISSION OF KENTUCKY, APPELLANTS,

vs.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION AND FRED M. VINSON, ECONOMIC STABILIZATION DIRECTOR, BY CHESTER BOWLES, PRICE ADMINISTRATOR, ET AL.

No. 592

FRED M. VINSON, ECONOMIC STABILIZATION DIRECTOR, BY CHESTER BOWLES, PRICE ADMINISTRATOR, APPELLANT,

vs.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION AND THE ALABAMA GREAT SOUTHERN RAILROAD COMPANY, ET AL.

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF KENTUCKY

FILED {OCTOBER 9, 1944.
OCTOBER 13, 1944.

IN THE

District Court of the United States

FOR THE WESTERN DISTRICT OF KENTUCKY

CIVIL ACTION No. 707

THE STATE OF TENNESSEE AND PORTER DUNLAP, LEON JOUROLMON, JR., AND JOHN C. HAMMER, CONSTITUTING THE RAILROAD AND PUBLIC UTILITIES COMMISSION OF THE STATE OF TENNESSEE

Plaintiffs

VERSUS

THE UNITED STATES AND THE INTERSTATE COMMERCE COMMISSION

Defendants

COMPLAINT

LEON JOUROLMON, JR.,
123 Memorial Building,
Nashville 3, Tenn.
Attorney for Plaintiffs

June 10, 1944

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. 574

THE STATE OF ALABAMA AND PUBLIC SERVICE COMMISSION, THE STATE OF TENNESSEE AND THE RAILROAD AND PUBLIC UTILITIES COMMISSION OF THE STATE OF TENNESSEE, COMMONWEALTH OF KENTUCKY AND RAILROAD COMMISSION OF KENTUCKY, APPELLANTS,

vs.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION AND FRED M. VINSON, ECONOMIC STABILIZATION DIRECTOR, BY CHESTER BOWLES, PRICE ADMINISTRATOR, ET AL.

No. 592

FRED M. VINSON, ECONOMIC STABILIZATION DIRECTOR, BY CHESTER BOWLES, PRICE ADMINISTRATOR, APPELLANT,

vs.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION AND THE ALABAMA GREAT SOUTHERN RAILROAD COMPANY, ET AL.

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF KENTUCKY

VOL. I

INDEX.

	Original	Print
Record from D. C. U. S., Western District of Kentucky	1	1
CIVIL ACTION NO. 707		
Complaint	1	1
Index of exhibits to complaint	28	i
Summons and return (omitted in printing)	418	
VOL. II		
Order convening three judge Court	420	419
Motion of Economic Stabilization Director for leave to intervene (omitted in printing)	423	

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., FEBRUARY 6, 1945.

—6425

Record from D. C. U. S., Western District of Kentucky—Continued	Original	Print
Complaint of Economic Stabilization Director (omitted in printing)	425	
Order granting intervention (omitted in printing)	463	
Answer of United States of America	464	420
Answer of Interstate Commerce Commission	466	421
Answer of intervening rail lines	475	428
Motion of rail lines for leave to intervene	478	429
Order granting intervention	481	431
Motion of intervening rail lines to dismiss complaint of Fred M. Vinson	483	431
Proceedings before Interstate Commerce Commission in Docket No. 29037	591	433
Petition of Railroads Operating in the State of Tennessee	591	433
Answer of Railroad and Public Utilities Commission of the State of Tennessee	608	444
Order of the Commission instituting investigation	616	448
Transcript of the stenographer's notes of the hearing held December 2 and 3, 1943, at Nashville, Tennessee, and exhibits filed at said hearing (omitted in printing)	618	
Report of the Commission (omitted in printing)	1050	
Petition of the Railroad and Public Utilities Commission of the State of Tennessee for reconsideration	1076	450
Petition of the Price Administrator for reconsideration	1105	466
Motion for Entry of Order	1154	508
Order of the Commission denying petitions for reconsideration	1158	504
Order of the Commission entered May 8, 1944	1159	504
Corrected order of the Commission entered May 8, 1944 (omitted in printing)	1161	
CIVIL ACTION NO. 706		
Petition	1164	506
Exhibit "A"—Report of Commission (omitted in printing)	1178	
Exhibit "B"—Excerpts from proposed report of Examiner	1215	513
Exhibit "C"—Petition for reconsideration	1220	518
Exhibit "D"—Order denying petitions for reconsideration (omitted in printing)	1239	
Exhibit "E"—Order of Commission, May 8, 1944	1241	529
Exhibit "F"—Corrected order of Commission, May 8, 1944 (omitted in printing)	1244	
Summons and return (omitted in printing)	1247	
Order convening three judge Court	1249	531
Motion of Economic Stabilization Director for leave to intervene (omitted in printing)	1253	
Complaint of Economic Stabilization Director (omitted in printing)	1255	
Order granting intervention (omitted in printing)	1293	

	Original	Print
Record from D. C. U. S., Western District of Kentucky—Continued		
Answer of United States of America	1294	532
Answer of Interstate Commerce Commission	1296	533
Answer of intervening rail lines	1305	540
Motion of rail lines for leave to intervene	1308	541
Order granting intervention	1311	542
Order on motion to dismiss complaint of Fred M. Vinson	1313	543
Order of submission	1314	544
Motion of intervening rail lines to dismiss complaint of Fred M. Vinson	1316	545
Proceedings before Interstate Commerce Commission in Docket No. 28963	1360	546
Transcript of hearing	1361	547
Caption and appearances	1361	547
Testimony of E. N. Aiken	1369	551
T. J. Stewart	1468	614
J. D. Makinson	1491	629
T. K. Lynch	1509	640
J. A. Higgins	1535	658
P. E. Geil	1547	666
W. W. Simpson	1570	680
J. S. Tassin	1609	706
J. L. Sharpe	1656	736
J. S. Tassin (recalled)	1658	737
W. F. Kennesly	1678	750
W. W. Waldrop	1687	755
C. H. Ohme	1700	763
G. W. Tobias	1717	774
J. G. Bruce	1724	778
Norwood Johnson	1744	789
Jacob Mohr	1782	813
J. G. Bruce (recalled)	1797	823
Exhibits:		
No. 1—Railroad map of Southeastern United States (omitted in printing)	1838	
No. 2—Examples of possible reductions of interstate fares, etc.	1839	848
No. 3—Examples showing fares paid for transportation in coaches by interstate and intrastate passengers	1843	851
No. 4—Report and order of Alabama Public Service Commission in Docket No. 8618	1844	851
Nos. 5 to 7—Examples of present interstate and intrastate fares	1849	856
No. 8—Statement showing manner in which the lower basis of fares in coaches intrastate in Alabama makes it possible for passengers to defeat through published interstate fares, etc.	1852	858
No. 9—Same	1855	859
No. 10—Same	1856	860

	Original	Print
Proceedings before Interstate Commerce Commission in Docket No. 28963—Continued		
Exhibits—Continued		
No. 11—Same	1857	860
No. 12—Same	1858	861
No. 13—Same	1859	862
No. 14—Same	1860	863
No. 15—Statement of present basic passenger fares between points on G. M. & O. R.R. (in cents per mile)	1861	864
No. 16—Examples of advantage, preference and prejudice as between persons in intrastate and interstate commerce in Alabama	1862	864
No. 17—Findings and data in support thereof	1863	865
No. 18—Transcript of hearing before Alabama Public Service Commission in Docket No. 8618	1888	886
Caption and appearances	1889	886
Testimony of E. E. Barry	1894	888
W. W. Simpson	1938	915
J. L. Beight	1961	929
James S. Earley	2016	963
No. 19—Order of I. C. C. in ex parte No. 148, Aug. 1, 1942	2048	982
No. 20—Reply of respondents to petition of Leon Henderson before I. C. C.	2050	984
No. 21—Operating statistics	2058	992
No. 22—Selected passenger revenue and traffic statistics	2069	1001
No. 23—Financial statements	2074	1004
No. 24—Statements showing passenger revenue, 1937-1941	2079	1008
No. 25—Charts showing production of durable goods, etc.	2083	1012
No. 26—Statement reproducing excerpts from decisions of U. S. Supreme Court and I. C. C. (omitted in printing)	2092	
No. 27—Statement showing total railway operating revenues earned in Alabama by petitioners, 1939-1942	2096	1021
No. 28—Statement showing passenger operating revenues, etc., earned in Alabama by petitioners, 1939-1942	2097	1022
No. 29—Same	2098	1023
No. 30—Same showing freight revenues	2099	1024
No. 31—Comparison of present rail coach fares and bus fares with proposed fares	2100	1025
No. 32—Statement showing scheduled and restricted stops of various first class passenger trains	2102	1027
No. 33—Statement showing Alabama operating revenues and expenses, etc., 1941-1942	2104	1029

	Original	Print
Record from D. C. U. S., Western District of Kentucky—Continued		
Proceedings before Interstate Commerce Commission in Docket No. 28963—Continued		
Exhibits—Continued		
No. 34—Same, 1942-1943, Southern District	2117	1036
No. 35—Same, 1941-1942, Southern Region	2118	1036
No. 36—Statement showing railway revenues and expenses—Railways of class I in the United States	2119	1036
No. 37—Same	2122	1038
No. 38—Same	2124	1040
No. 39—Statement reproducing a part of the report in case No. 26550 (omitted in printing)	2129	
No. 40—Passenger and traffic statistics (other than commutation) of class I steam railways in the United States	2134	1046
Nos. 41 to 51 inc.—(omitted in printing)	2152	
CIVIL ACTION NO. 708		
Petition	2218	1047
Exhibit "A"—Corrected order of Interstate Commerce Commission of May 8, 1944 (omitted in printing)	2233	
Exhibit "B"—Opinion and order of Railroad Commission of Kentucky of May 31, 1943, in Suspension Docket No. 29, Increased Passenger Fares and Charges	2235	1062
Exhibit "C"—Opinion of Interstate Commerce Commission of March 25, 1944, in Docket 29000, Kentucky Intrastate Fares, and related cases (omitted in printing)	2249	
Exhibit "D"—Order of Interstate Commerce Commission of May 8, 1944 denying petition of plaintiffs herein for reopening of Docket 29000, Kentucky Intrastate Fares (omitted in printing)	2278	
Exhibit "E"—Report proposed by Examiner C. E. Stiles in Docket 29000, Kentucky Intrastate Fares	2279	1077
Summons and return (omitted in printing)	2294	
Order convening three judge Court	2296	1095
Order filing affidavit of service (omitted in printing)	2297	
Acknowledgments of service of motion for leave to intervene	2300	1096
Motion of Economic Stabilization Director for leave to intervene	2302	1097
Complaint of Economic Stabilization Director	2304	1098
Affidavit of Doris S. Whitnack	2339	1118
Order granting intervention	2345	1125
Answer of United States of America	2349	1125
Intervention of Interstate Commerce Commission	2351	1127
Answer of Interstate Commerce Commission	2352	1128
Motion of rail lines for leave to intervene	2361	1135
Order granting intervention	2364	1136

Record from D. C. U. S., Western District of Kentucky—Continued	Original	Print
Answer of intervening rail lines	2366	1136
Motion of plaintiffs to dismiss answer of Interstate Commerce Commission	2369	1138
Motion of intervening rail lines to dismiss complaint of Fred M. Vinson	2371	1139
Proceedings before Interstate Commerce Commission in Docket No. 29000	2463	1140
Transcript of hearing	2463	1140
Caption and appearances	2463	1140
Testimony of E. N. Aiken	2468	1142
F. H. Tucker, Jr.	2513	1170
E. M. Tolleson	2536	1185
J. S. Tassin	2557	1199
J. E. Marks	2618	1237
P. E. Tanner	2660	1264
Doris S. Whitnack	2666	1268
Exhibits:		
No. 1—Map of Southeastern United States (omitted in printing)	2681	
No. 2—Report and order of Railroad Commission of Kentucky in Suspension Docket No. 29, May 31, 1943 (omitted in printing)	2682	
No. 3—Examples of possible reductions of interstate fares in coaches, etc.	2695	1276
No. 4—Examples showing fares in coaches only paid by interstate passengers, also by intrastate passengers traveling equal distances	2699	1279
No. 5—Examples of possible reductions on interstate fares for round-trip coach tickets, etc.	2701	1280
No. 6—Statistical findings and data in support thereof	2702	1282
No. 7—Statement showing comparison of present and proposed rail coach fares between representative points with bus fares	2734	1301
No. 8—Statement of passenger statistics—Kentucky intrastate and interstate, 1935–1942	2735	1302
No. 9—Various railway operating statistics of respondent carriers, 1938–1942, inc., and first six months of 1943	2744	1310
No. 10—Summary of property investment and operating income account (partially estimated) of respondents for years 1938–1943, inc.	2755	1318
No. 11—Statement showing final assessments of petitioners' properties in Kentucky, 1938–1941, inc., etc.	2757	1320

Record from D. C. U. S., Western District of Kentucky—Continued		
Proceedings before Interstate Commerce Commission in Docket No. 29000—Continued		
Exhibits—Continued	Original	Print
No. 12—Statement showing net railway operating income before Federal income taxes, 1936-1943	2758	1321
No. 13—Statement showing freight service operating ratio, 1936-1943	2759	1322
No. 14—Statement showing passenger service operating ratios, 1936-1943	2760	1323
No. 15—Statement showing operating revenues and expenses assigned to passenger service—ten railroads operating in Kentucky	2761	1324
No. 16—Statement showing method used in assigning 1943 revenues and expenses to to passenger service (omitted in printing)	2762	
No. 17—Valuation data for selected railroads operating in Kentucky	2769	1325
No. 18—Statement of freight revenue (accounts 101 and 121)	2770	1326
No. 19—Statement showing investment in railway property used in transportation service	2771	1327
No. 20—Statement of train connections at Fulton, Ky. and Louisville, Ky., June to August inc., 1943	2780	1335
Findings of fact and conclusions of law	2786	1341
Opinion, Miller, J.	2790	1345
Decree	2809	1362
Clerk's certificate (omitted in printing)	2811	
Appeal papers of Appellant States:		
Notice of appeal	2812	1364
Petition for appeal	2814	1365
Assignments of error	2816	1366
Order allowing appeal	2823	1373
Bonds on appeal (omitted in printing)	2825	
Citation (omitted in printing)	2836	
Praecipe for transcript of record	2838	1374
Order as to record	2840	1375
Acknowledgments of service of praecipe	2841	1375
Appeal papers of Economic Stabilization Director:		
Notice of appeal (omitted in printing)	2846	
Petition for appeal	2848	1376
Assignments of error	2850	1377

	Original	Print
Record from D. C. U. S., Western District of Kentucky—Continued		
Appeal papers of Economic Stabilization Director—Continued		
Order allowing appeal	2877	1379
Citation (omitted in printing)	2879	
Praecipe for transcript of record	2881	1379
Order to transmit original record	2884	1380
Order as to record	2887	1381
Statement of points to be relied upon by States of Alabama and Kentucky, etc., in Case No. 574	2893	1381
Statement of points to be relied upon by State of Tennessee, etc., in Case No. 574	2896	1386
Designation of parts of record to be printed by appellants in Case No. 574	2900	1388
Statement of point to be relied upon and designation of parts of record to be printed in Case No. 592	2907	1391
Order noting probable jurisdiction	2911	1393

In the District Court of the United States
For the Western District of Kentucky

THE STATE OF TENNESSEE and PORTER DUNLAP, LEON JOUROLMON, JR., and JOHN C. HAMMER, Constituting the RAILROAD AND PUBLIC UTILITIES COMMISSION of the STATE OF TENNESSEE,
Plaintiffs

Versus

THE UNITED STATES and the INTERSTATE COMMERCE COMMISSION,
Defendants

CIVIL ACTION

No. 707

COMPLAINT

THE STATE OF TENNESSEE and Porter Dunlap, Leon Jourolmon, Jr., and John C. Hammer, constituting the Railroad and Public Utilities Commission of the State of Tennessee, bring this complaint against the United States and the Interstate Commerce Commission and respectfully show unto this Honorable Court as follows:

I

That the plaintiff, the State of Tennessee, is one of the sovereign states of the United States, and the Railroad and Public Utilities Commission is a department of the State of Tennessee, with its principal offices in Davidson County, State of Tennessee, and said Commission has general jurisdiction over the standards of service of, and the rates and fares charged for same by, common carriers by rail engaged in intrastate commerce in the state of Tennessee and has the statutory power and authority to fix and prescribe just and reasonable rates for the services of such carriers in intrastate commerce. Plaintiffs Dunlap, Jourolmon, and Hammer are the duly

elected or appointed and qualified members of said Commission and have their domicile in the state of Tennessee.

II

That the United States is made a party defendant herein by virtue of the authority and requirements of the Act of October 22, 1913 (38 Stat. L. 219; Sections 43 and 45–48 inclusive, of Title 28 of the United States Code Annotated, and under Section 792 of said Title 28 of the United States Code), and because the Interstate Commerce Commission, defendant herein, claims to have derived its authority for the unconstitutional and illegal acts committed by said Interstate Commerce Commission, and hereinafter complained of, from said defendant, the United States. The Interstate Commerce Commission, a defendant herein, is a regulatory body established and existing under an Act of Congress known as the Interstate Commerce Act, and said defendant has jurisdiction over common carriers by rail engaged in interstate commerce; it likewise has jurisdiction, under certain strictly defined constitutional and statutory limitations, over common carriers by rail engaged in intrastate commerce. This suit involves questions arising under the Constitution and laws of the United States and is a case in which a state is a party and in which the United States and an agency thereof are defendants, as will be made to appear more particularly herein.

III

That the Railroad and Public Utilities Commission, representing and appearing for the State of Tennessee, was a protestant in that certain proceeding known as *Interstate Commerce Commission, Docket No. 29037, Tennessee Intrastate Fares*, wherein the Interstate Commerce Commission on October 13, 1943, instituted an investigation to determine whether the present rates for the intrastate transportation of passengers between points in Tennessee, cause or will cause any undue or unreasonable advantage, preference or prejudice as between persons or localities in intrastate commerce on

the one hand and interstate or foreign commerce on the other, or any undue, unreasonable or unjust discrimination against interstate or foreign commerce; and also to determine what fares, if any, or what maximum or minimum or maximum and minimum fares or charges shall be prescribed to remove such advantage, preference, prejudice or discrimination, if any be found to exist.

IV

That pursuant to a petition brought by sixteen railroads operating within the state of Tennessee, in which petition violation of Sections 3 and 13, Title 49 of the United States Code, known as the Interstate Commerce Act, was charged, an investigation was instituted by the Interstate Commerce Commission, as set out in paragraph III hereof, upon which hearing was commenced in Nashville, Tennessee, before the Examiner for the Interstate Commerce Commission on December 2-3, 1943, following which hearing the Examiner made no proposed report, and the case was argued orally before the Interstate Commerce Commission in Washington, D. C., on February 18, 1944. The Louisville & Nashville Railroad Company, one of the carriers which filed said petition before the Interstate Commerce Commission, is a corporation organized and existing under the laws of the Commonwealth of Kentucky and has its residence and principal office in the Federal Judicial District for the Western District of Kentucky. Said company is domesticated under the laws of the State of Tennessee with the right, power and authority to do business in that state as a common carrier of persons and property by rail. Subject to the provisions of Section 43, Title 28 of the United States Code, this complaint is brought in the District Court for the Western District of Kentucky, the place of residence of said Company.

V

That in addition to said Louisville and Nashville Railroad Company, the other parties on whose petition the investigation was

instituted by the Interstate Commerce Commission, are The Alabama Great Southern Railroad Company; Carolina, Clinchfield and Ohio Railway; Carolina, Clinchfield and Ohio Railway of South Carolina (Lessees: Atlantic Coast Line Railroad Company, and Louisville & Nashville Railroad Company); Central of Georgia Railway Company (M. P. Callaway, Trustee); The Cincinnati, New Orleans and Texas Pacific Railway Company; Gulf, Mobile and Ohio Railroad Company; Illinois Central Railroad Company; The Nashville, Chattanooga and St. Louis Railway; St. Louis-San Francisco Railway (J. M. Kurn and John G. Lonsdale, Trustees); Southern Railway Company; Tennessee, Alabama & Georgia Railway Company; Tennessee Central Railway Company; and The Yazoo and Mississippi Valley Railroad Company. Of the foregoing railway companies some are purely nominal parties, engaged only in interstate commerce, and would derive no benefit from any increase in intrastate fares, these being The Alabama Great Southern Railroad Company, Central of Georgia Railway Company, St. Louis-San Francisco Railway, and the Tennessee, Alabama and Georgia Railway Company. Of the other carriers three have but a negligible interest in these proceedings, these being Gulf, Mobile and Ohio Railroad Company, Illinois Central Railroad Company, and The Yazoo & Mississippi Valley Railroad Company. The level of intrastate coach fares of these three carriers is the same as the level of their interstate coach fares. Carolina, Clinchfield and Ohio Railway, and Carolina, Clinchfield and Ohio Railway of South Carolina (Lessees: Atlantic Coast Line and Louisville and Nashville Railroad Company), have likewise but a negligible interest because of the fact that they are predominantly freight carrying railways and have inconsequential passenger business and revenues. Tennessee Central Railway Company failed to evince any interest in the proceedings and made no showing of any intrastate passenger business or revenues whatsoever. The plaintiffs allege that the proceedings conducted before the Interstate Commerce Commission in *Docket 29037* were primarily and almost exclusively for the use, benefit and advantage of the four large Tennessee railroads, these being The Nash-

ville, Chattanooga and St. Louis Railway; Louisville and Nashville Railroad Company; Southern Railway Company; and The Cincinnati, New Orleans and Texas Pacific Railway Company, which latter is an affiliate of the Southern Railway System. Plaintifis allege and would show unto the Court that the latter four carriers, which are the true parties in interest in this cause, would receive 99.38 percent of the total increase in passenger revenue to be derived by all Tennessee carriers in the aggregate if the increases permitted by defendant Interstate Commerce Commission are allowed.

VI

That the proposed findings and conclusions of the Interstate Commerce Commission in said *Docket No. 29037* were published on March 25, 1944, and served on the parties on March 30, 1944, whereupon the Railroad and Public Utilities Commission of the State of Tennessee filed a petition for rehearing and reconsideration, which petition was denied, and final corrected order was entered in said case dated May 8, 1944, the Commission making the findings and conclusions aforesaid a part of said order. A copy of the corrected order of the Interstate Commerce Commission is hereto attached and marked Exhibit A. A copy of the findings and conclusions dated March 25, 1944, together with a copy of the dissenting views of Commissioners Splawn, Aitchison and Mahaffie, is hereto attached and marked Exhibit B. A copy of the order of the Commission denying the petition for rehearing and reconsideration, and dated May 8, 1944, is hereto attached and marked Exhibit C. In the corrected order aforesaid the Interstate Commerce Commission, pretending to act under the authority of the laws of the United States, among other things complained of herein set aside and declared null and void the existing fares for transportation of coach passengers in intrastate commerce prescribed by the Railroad and Public Utilities Commission of Tennessee to be charged by railroads operating as common carriers in the state of Tennessee under the Constitution and laws of the State of Tennessee.

VII

That prior to the proceedings before the Interstate Commerce Commission aforesaid the said railroads operating in Tennessee, through their duly authorized tariff filing agency, filed tariffs with the Railroad and Public Utilities Commission making changes in the previously existing tariffs for application to carriage of intrastate passengers in Tennessee, all of which changes constituted increases in the existing fares. Thereupon said Railroad and Public Utilities Commission, in conformity with its customary and established administrative practice in such cases, suspended said tariffs and instituted an investigation as to the necessity for said increases, affording the carriers full opportunity to appear and be heard as to the fairness and reasonableness of the increased fares. On completion of the investigation and hearing conducted as aforesaid, the plaintiff Railroad and Public Utilities Commission on August 30, 1943, made its findings and order in which it found that the carriers had presented no evidence which would justify the increases sought by them and ordered that the existing fares should be maintained as just and reasonable. A copy of the order of the said Commission dated August 30, 1943, is hereto attached and marked Exhibit D. The said order of the Railroad and Public Utilities Commission of Tennessee has not been appealed to any of the courts of the State of Tennessee having jurisdiction of such appeals to review proceedings of the Commission, and accordingly the said order has become final under the laws of the State of Tennessee, and the rates there prescribed are presently in effect.

VIII

That the findings and order aforesaid of the plaintiff Railroad and Public Utilities Commission were made in conformity with the program of stabilization of prices promulgated by the Federal government and embodied in the Emergency Price Control Act of 1942 (Public Law 421, 77th Congress), and the Act of October 2, 1942 (Public Law 729, 77th Congress) and in obedience and according to

Executive Orders of the President of the United States, Number 9250 dated October 3, 1942, and Number 9328, dated April 8, 1943. In Executive Order Number 9328 aforesaid the President of the United States directed the attention of all state authorities "concerned with the rates of common carriers or other public utilities" to the "stabilization program of which this order is a part so that rate increases will be disapproved and rate reductions effected, consistently with the Act of October 2, 1942, ..." The plaintiff Commission interpreted the stabilization policy to require disapproval of all increases of rail passenger fares provided that the rail carriers are earning sufficient revenues to enable them to furnish the adequate and efficient service necessary to the effective prosecution of the war, and, failing to find any present or future necessity for such increases under the evidence, acted consistently with the plain intention of the Acts of Congress and Executive Orders aforesaid, denying the increases as sought.

IX

That it is the effect of the said corrected order of the Interstate Commerce Commission, dated May 8, 1944, to require all railroads doing business in Tennessee to establish on or before July 1, 1944, fares of 2.2 cents per mile one-way and 1.98 cents per mile round-trip for the transportation of passengers in coaches between points in the state of Tennessee over routes wholly within the boundaries of said state. The fares prescribed by the Railroad and Public Utilities Commission are 1.65 cents per mile one-way and 1.485 cents per mile round-trip for such transportation. The increased fares ordered by the said Interstate Commerce Commission exceed the present fares prescribed by the Railroad and Public Utilities Commission, now lawfully in effect, by thirty-three and one-third percent (33⅓%); and if the increased fares are permitted to become effective, as required by the order aforesaid, intrastate passengers in Tennessee will be required to pay in the aggregate more than $550,000 per annum in increased cost of transportation, based on

the present volume of passenger coach travel within the state of Tennessee. Each of the four carriers primarily concerned in this proceeding, viz: Louisville and Nashville Railroad; The Nashville, Chattanooga, and St. Louis Railway; Southern Railway Company; and The Cincinnati, New Orleans, and Texas Pacific Railway Company, now is subject to the foregoing fare schedules established by the Railroad and Public Utilities Commission. Prior to February 10, 1942, both interstate and intrastate fares were 1.5 cents one-way and 1.35 cents round-trip. Effective February 10, 1942, said fares were increased 10 percent pursuant to *Ex Parte 148, Increased Railway Rates, Fares, and Charges, 1942*, 242 I. C. C. 545, and thereby became 1.65 cents one-way and 1.485 cents round-trip. The Railroad and Public Utilities Commission permitted the same 10 percent increase at virtually the same time. No further changes were made in said fares until October 1, 1942, at which time interstate fares in the Southern states were increased to 2.2 cents per mile one-way and 1.98 cents per mile round-trip, which fares are still in effect.

X

That plaintiffs allege, as a matter of law, that the corrected order of the Interstate Commerce Commission dated May 8, 1944, which they seek to have enjoined, set aside, and annulled, exceeds the powers granted to the Federal government in the Commerce Clause, Article I, Section 8, of the Constitution of the United States, constitutes an unwarranted and wholly unjustified invasion of the sovereignty of the State of Tennessee, and is in violation of the Fifth Amendment and the Tenth Amendment of the Constitution of the United States. It is alleged that there were no facts before said defendant Commission justifying its report, findings and order and the record wholly lacks any foundation for the making of such report, findings and order. A transcript of the complete record in *Docket No. 29037*, together with all exhibits filed therein, is attached hereto and marked Exhibit E.

XI

That plaintiffs allege that the following finding and conclusion of the Commission, on Sheets 19 and 20, of Exhibit B, hereto, is in error; said finding being unsupported by the evidence of record, and consequently the order based upon said finding is unconstitutional. Said finding is in the following terms:

> Upon the records in the instant proceedings we can find no warrant for changing our views that a basic coach fare of 2 cents per mile, plus an additional 10 percent for the duration of the war, is reasonable for general application.

The plaintiffs further allege that the similar finding and conclusion of the Commission on Sheet 10, Exhibit B, is in error, being unsupported by the evidence in the cause; said finding is in the following terms:

> The record does not warrant any modification of our conclusion in the report on further hearing in *Ex Parte No. 148* with respect to the passenger fares of these respondents.

Plaintiffs allege that the Interstate Commerce Commission erred in thus finding that the interstate rates are reasonable without a full hearing as provided by Section 13 (4) of Title 49, of the United States Code, and consequently the order and action based upon said finding violates the Tenth Amendment of the United States Constitution in that it invades powers reserved to the State of Tennessee to regulate intrastate commerce. The finding of the Commission in regard to the reasonableness of interstate fares is erroneous as in no phase of the investigation made by the Interstate Commerce Commission in *Docket No. 29037*, did the Commission receive any evidence, nor did the railroads submit any evidence purporting to show that the interstate coach fare of 2.2 cents per mile is, or has been found by the Commission to be just and reasonable for the transportation of passengers in coaches in Tennessee, or in interstate commerce. Plaintiffs allege that in 1936, in *Docket No. 26550, Passenger Fares and Surcharges*, 214 I. C. C. 174, the Commission made an investigation of interstate passenger fares and charges, and sought to determine what would be the reasonable interstate fares to apply not only in Southern Passenger Association territory

but throughout the United States. In said case the Commission treated the Southern Region separately in its report and order and found that the basic interstate coach fare of 1.5 cents per mile was not unreasonable or otherwise unlawful for application throughout the South. A 10 percent increase, raising the fare to 1.65 cents per mile, was published by the carriers on authority of an order of the Commission dated January 21, 1942, and confirmed by the decision in *Ex Parte 148, Increased Railway Rates, Fares and Charges, 1942*, 248 I. C. C. 545. The Tennessee intrastate fare was increased by the Railroad and Public Utilities Commission of Tennessee to 1.65 cents per mile on February 10, 1942. The Railroads in Southern Passenger Association territory on July 14, 1942, filed a petition praying modification of the order in *Docket No. 26550*, seeking authority to increase southern coach fares to 2.2 cents per mile. By order dated August 1, 1942, the Interstate Commerce Commission denied this petition but in the same document granted the prayer of the petition in an order entered in *Ex Parte No. 148*, modifying the former order in *Ex Parte No. 148* so as to authorize southern carriers "to apply the increase of ten percent approved in said order to a basic fare of 2 cents per mile of said petitioners." Plaintiffs as a matter of law, allege that the procedure followed by the Commission in increasing the basic fares in the South to 2.2 cents per miles is improper, illegal and erroneous and was made without due process of law. Plaintiffs allege that no hearing whatsoever was accorded any parties who might have wished to protest any basic interstate fares. In the petition filed by all Class I Railroads in the United States in *Ex Parte No. 148*, the carriers made no prayer for an increase of fares from 1.5 cents to 2.2 cents per mile in or throughout the South, but instead specifically prayed for authority to make increases only as follows: *Passenger Fares, a uniform increase of 10% in all fares as published in all passenger tariffs.* Plaintiffs allege that this petition in *Ex Parte No. 148*, was never modified, amended or changed by the carriers, and the authority granted on August 1, 1942, in that cause to increase fares in the South to 2.2 cents per miles is accordingly illegal, null and void as none of the

parties involved had notice that such an increase was in issue; said order is accordingly illegal, null and void, and in violation of the Fifth Amendment to the Constitution of the United States because it was made without due process of law.

XII

That the plaintiffs allege, as a matter of law, that the finding of the Commission aforesaid, to the effect that the interstate fares are reasonable, was made without due process of law in the following respects. The proceeding of the Interstate Commerce Commission known as *Ex Parte No. 148, Increased Rates, Fares and Charges, 1942*, was a cooperative procedure, by which is meant that representatives of the state commissions throughout the United States were invited to sit with the Commission, and consult with it upon the issues, findings, and conclusions to be incorporated in reports and orders. Said cooperative procedure was carried out under the cooperative agreement between the Interstate Commerce Commission and the National Association of Railroad and Utilities Commissioners, under which all such cooperative proceedings are conducted. The record in this case discloses that the cooperating State Commissioners were not called by the Interstate Commerce Commission when it entered its order of August 1, 1942, modifying its original order in *Ex Parte No. 148*, so as to permit the carriers operating throughout the south to apply the 10 percent increases to a basic fare of 2 cents per mile on the lines of said railroads. Instead of a 10 percent increase upon the existing published tariffs, carriers throughout the south were actually allowed an increase of seven-tenths of a cent per mile, or a 46.66 percent increase. Said procedure of the Commission was made without pleadings on the part of the parties, without proof to support same, and with no opportunity on the part of protesting parties to resist; and it is accordingly illegal, erroneous, and made without due process of law, wherefore said order is wholly null and void. Such procedure was also in violation of the cooperative agree-

ment under which cooperative proceedings are conducted, and consequently the findings, conclusions, and orders based upon said action of the Commission are erroneous and unconstitutional.

XIII

That plaintiffs herein allege, as a matter of law, that the third specific finding and conclusion of the defendant Commission, on Sheet 20, of Exhibit B hereto, is in error, said finding being unsupported by and directly contrary to the evidence of record, and consequently the order based upon said finding is unconstitutional. Said finding is in the following terms:

> The conditions affecting the one-way and round-trip transportation of passengers in coaches within [the State of Tennessee], and the round-trip transportation of passengers in sleeping and parlor cars within . . . Tennessee, intrastate on the one hand, and interstate to, from, and through [said State] on the other, are substantially similar.

Plaintiffs allege that, on the contrary, the record in this cause by undisputed evidence manifests that upon the average there is a substantial difference in the service and convenience accorded interstate passengers and that accorded intrastate passengers within the state of Tennessee and that the services and conveniences accorded intrastate passengers are inferior to those accorded interstate passengers.

XIV

That plaintiffs herein allege, as a matter of law, that the fourth specific finding and conclusion of the Commission, on Sheet 21, of Exhibit B hereto, is erroneous and contrary to the proof and wholly at variance with the facts disclosed of record, and consequently the

order based upon said finding is unconstitutional. Said finding is in the following terms:

> Interstate passengers in [Tennessee] travel in the same trains and generally in the same cars with intrastate passengers, but are forced to pay higher fares than the intrastate passengers for like services, to the undue and unreasonable advantage and preference of the intrastate passengers and the undue and unreasonable disadvantage and prejudice of the interstate passengers.

Plaintiffs further allege, as a matter of law, that the similar finding of the Commission, on Sheet 13, of Exhibit B, is in error. Said finding is unsupported by the evidence of record and is as follows:

> Respondents in [Tennessee] are engaged in the handling of both intrastate and interstate passengers. Such passengers are carried on the same trains and generally in the same cars, but the interstate passengers have to pay higher fares than the intrastate passengers for corresponding distances.

Plaintiffs allege that the following similar finding on said Sheet 13 is likewise in error, being unsupported by the evidence in the cause:

> All trains operated by respondents in [Tennessee] are available to and are used by both interstate and intrastate passengers, and the services accorded to both classes of passengers are substantially the same.

Plaintiffs herein also further allege that the following finding of the Commission, on Sheet 20, Exhibit B, is in error and is wholly unsupported by the evidence of record, and consequently the order based upon said finding is unconstitutional:

> Both intrastate and interstate passengers travel side by side under substantially similar circumstances and conditions on practically every passenger car on every branch and main line operated by respondents in [Tennessee].

Plaintiffs allege that the undisputed record in this cause demonstrates that all trains operated by Tennessee railroads are not available to interstate and intrastate passengers alike; interstate and intrastate passengers do not in all cases ride in the same trains nor in the same cars and do not have the same facilities available to and used by both. The railroads provide four trains which operate through and within the state of Tennessee and make only one scheduled stop within the state, thus carrying only interstate passengers, these being *de luxe* trains having the highest grade of service and facilities. On the other hand a considerable proportion of the service rendered within the state is wholly for intrastate passengers, such services being rendered in mixed trains; that is to say, trains consisting of a large number of freight cars with passenger service limited to a sub-standard, open-vestibule coach which is also used as quarters for the train crew in lieu of a caboose. Passenger trains are being operated through the state in many instances carrying more passengers than the seating capacity of the cars can accommodate, and numerous passengers are having to stand. Relatively speaking, the interstate passengers travel considerable distances, and the average interstate journey is much longer than the average intrastate journey. Passengers traveling long distances have more frequent opportunities under crowded train conditions to find seats as local passengers get on and off. Plaintiffs allege that the necessary inference to be found from these facts of record is that the ratio of intrastate standees to intrastate passengers per mile is higher than the ratio of interstate standees to interstate passengers per mile. Plaintiffs further allege that no persons who pay the higher interstate fares and no localities have appeared herein to complain of undue advantage, preference, and prejudice, and as far as this record shows none have complained to the railroads operating in Tennessee. These railroads do not seek relief for any particular persons or places, but seek and have been granted by the Commission a state-wide order. There is no evidence in this record to establish that the difference in interstate and intrastate fares constitutes a source of undue disadvantage to any one person and of undue advantage to any other one person. There is no evidence in the record

to show that any person who pays the interstate fares would be benefited by an increase in the intrastate fares. No locality in interstate commerce is shown to be injured by the disparity, nor is it shown that any locality would be benefited by an increase in the intrastate fares.

XV

That the plaintiffs allege, as a matter of law, that the fifth specific finding and conclusion of the Commission, on Sheet 21, Exhibit B, is a wholly erroneous finding as there is no evidence in the record to support the same, and consequently the order based upon said finding is unconstitutional. Said finding is in the following terms:

> Respondents' revenues under the lower intrastate fares are less by at least $525,000 in Tennessee than they would be if those fares were increased to the level of the corresponding interstate fares, and traffic moving under these lower intrastate fares is not contributing its fair share of the revenues required to enable respondents to render adequate and efficient transportation service.

Plaintiffs allege that there is no evidence in the record to the effect that traffic moving under the intrastate fares in Tennessee is not contributing its fair share of the revenues required to enable the carriers to render an adequate and efficient transportation service. It is alleged that, on the contrary, the evidence of record in this matter demonstrates that for the year ending September 30, 1943, the rate of return (before Federal income taxes) of the four railway companies, which are the prime beneficiaries of the increased rates ordered by the defendant Commission, on their investment in railway property used in transportation service plus cash, materials and supplies was as follows:

Cincinnati, New Orleans and Texas Pacific Railway, 17.2 percent;
Southern Railway Company, 15.1 per cent;
Louisville and Nashville Railroad, 15.7 per cent;
Nashville, Chattanooga, and St. Louis Railway, 12.4 per cent.

On the same basis the total rate of return for all of the eight carriers for which information was available was 12.8 per cent. During the year ending September 30, 1943, the carriers operating in Tennessee earned in excess of a fair return, their present earnings are at even higher levels, and they do not need the revenues from the increase of intrastate fares in order to enable them to earn a fair return. There is no evidence in the record to indicate that the revenues from the present intrastate passenger fares are less than those required to enable respondents to render adequate and efficient transportation service, or that there is any deficiency in respondents' revenues from their passenger and freight traffic considered as a whole. It is further alleged by plaintiffs that the evidence of record in this case is conclusive and undisputed that since 1941 both the average number of passenger cars in each passenger train and the average number of passengers in each passenger car on the major railroads operating in Tennessee have shown a large increase. The number of passenger cars per train has increased in 1942 over 1941 for the Southern Railway by 20 per cent; for the Louisville and Nashville Railroad by 11 per cent; for the Tennessee Central by 36 per cent; and for The Nashville, Chattanooga and St. Louis Railway by 10 per cent. The average number of passengers in each passenger car has increased for the same period as follows:

Cincinnati, New Orleans and Texas Pacific Railway, 102 per cent;
Southern Railway, 71 per cent;
Louisville and Nashville Railroad, 71 per cent;
Tennessee Central Railway, 140 per cent;
Nashville, Chattanooga and St. Louis Railway, 87 per cent.

This has resulted in a large increase in per car earnings for 1942 over those of 1941. The average revenue per passenger car mile in cents has increased as follows: for the Cincinnati, New Orleans and Texas Pacific Railway, from 25 cents to 45 cents, or an increase of 85 per cent; for the Southern Railway, from 29 cents to 46 cents, or an increase of 56 per cent; for the Louisville and Nashville Railroad, from 22 cents to 37 cents, or an increase of 65 per cent; for the Illi-

nois Central, from 23 cents to 34 cents, or an increase of 44 per cent; for the Tennessee Central Railway, from 11 cents to 25 cents, or an increase of 116 per cent; for The Nashville, Chattanooga and St. Louis Railway, from 21 cents to 37 cents, or an increase of 76 per cent. For the entire Southern Region the first eight months of 1943 reflect a similar increase over 1942 as follows: the average revenue per passenger car mile in the Southern Region increased from 46 cents to 55 cents, or a 19 per cent increase. In each of the above instances the earnings were computed on the basis of 1.65 cents per passenger mile, the present intrastate fare in Tennessee, in order to show the increase, while the former average passenger car mile revenues used are based on the actual average revenues as shown in the reports of the carriers, and vary from 1.60 cents to 2.01 cents per mile, which latter figure is the average revenue per passenger mile for the entire Southern Region for 1942. Plaintiffs further allege that the record in this cause proves that the revenues required by Tennessee carriers to defray expenses of transportation is presently 1.07 cents per passenger mile or less, as compared with the intrastate fare of 1.65 cents per mile. Said requirements may be calculated from evidence in the record in *Docket No. 29037, Exhibit No. 6*, as to 1942 data, filed by the carriers, as follows:

Revenues per coach mile (Ex. 6, p. 16)	48.36c
Multiplied by Passenger Operating Ratio (Ex. 6, p. 10)	.63
Expense per coach mile	30.46c
Divided by passenger miles per coach mile (Ex. 6, p. 30)	28.51
Expenses per passenger mile	1.07c

The Interstate Commerce Commission found on Sheet 7, Exhibit B, that:

> Four of these respondents had a deficit in 1942.

Plaintiffs allege that the four carriers referred to are among those which have but nominal or negligible interest in this proceeding.

The Illinois Central, with a deficit of $578,425, and the Gulf, Mobile & Ohio, with a deficit of $592,468, already have intrastate coach fares on a level with interstate fares, and would derive no benefit whatever from the ordered increase. Carolina, Clinchfield and Ohio Railway, with a deficit of $84,999, is predominantly a freight carrier with but negligible passenger business, and would gain from the increased passenger fares in Tennessee only $2,058 annually on the basis of 1943 operations. Tennessee Central Railway, with a deficit of $84,185, presented no evidence to show that it would derive any benefit whatever from the increased Tennessee fares. The record manifests that the increase of passenger revenues of this carrier, for 1943 over 1941, was 1,056 per cent, as compared to an increase of but 314 per cent for all eight major carriers; the increase for 1943 over 1942 was 345 per cent as compared to but 93 per cent for the eight Tennessee carriers.

XVI

That said plaintiffs allege, as a matter of law, that the sixth specific finding and conclusion of the Commission, Sheet 21, Exhibit B, is in error and constitutes an incorrect and improper finding, inasmuch as it is not supported by the facts of record in the case, and it is accordingly unconstitutional, as is also the order promulgated pursuant thereto. The finding referred to is in the following terms:

> The maintenance of intrastate one-way and round trip coach fares in . . . Tennessee, and of intrastate round-trip fares applicable in sleeping and parlor cars in . . . Tennessee, to the extent that such fares are on a lower level than the corresponding interstate fares, causes and will cause undue and unreasonable advantage to and preference of persons in intrastate commerce, undue and unreasonable disadvantage to and prejudice against persons in interstate commerce, and undue, unreasonable, and unjust discrimination against interstate commerce; and this unlawfulness should be removed by increasing the aforesaid intrastate fares in the [State of Tennessee] to the level of the corresponding interstate fares contemporaneously maintained by

> respondents to, from, and through such [State]; provided, that the aggregate charge made by any of respondents for the intrastate transportation in [such State] shall not exceed the aggregate charge made for like accommodations and for a like distance by the same respondent for interstate transportation to, from, or through such State.

Plaintiffs allege that said finding is erroneous inasmuch as there is no evidence in the record to support same; it is also a general finding and is not supported by any adequate finding of primary facts; whence it contravenes the Tenth Amendment to the Constitution of the United States, said amendment being in the following terms:

> The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

XVII

That plaintiffs allege, as a matter of law, that the failure of the Commission to make proper findings relative to the Wartime Stabilization Program, declared and promulgated by the Legislative and Executive Branches of the Federal government, is in error. Accordingly, plaintiffs allege, as a matter of law, that the Wartime Stabilization Program is based upon the policy set forth in the Emergency Price Control Act of 1942, 50 U. S. C. A. App. 901 et seq., and the Stabilization Act of October 2, 1942, 50 U. S. C. A. App. 961 et seq. Section 1 (961) of the latter Act sets forth the policy of Congress as follows:

> Such stabilization shall so far as practicable be on the basis of the levels which existed on February 15, 1942. The President may . . . thereafter provide for making adjustments . . . to the extent that he finds necessary to aid in the effective prosecution of the war or to correct gross inequities.

Thereafter the President of the United States issued Executive Order No. 9328 in which all regulatory agencies, including the

plaintiff Railroad and Public Utilities Commission of the State of Tennessee, were directed to allow no rate or fare increases unless the necessity for such increases be shown. In obedience to the statutes enacted and to the Order of the President, the Railroad and Public Utilities Commission of the State of Tennessee refused to allow increases in the fares of the respondent railroads, which had failed to show any necessity for such an adjustment. The findings of the Commission in this case further show that the fare of 1.5 cents per mile was the proper fare under the experiments made prior to the war, for a maximum fare which would create traffic during a peacetime period, and that a higher fare was not practical at such a time because of competition from motor carriers and privately operated automobiles. Accordingly, if it had allowed the railroads to increase their rates during wartime conditions, when the railroads do not need added revenues, to the same extent that they have needed them during peacetime, and when the lack of competition from motor vehicles alone makes the increases practicable, the Tennessee Railroad and Public Utilities Commission would have been allowing the railroads to make unreasonable profits by taking advantage of public or national need for transportation facilities during the war. The Emergency Price Control Act of 1942 expressly declared that prevention of such unreasonably high profits is in the interest of the national defense and security and necessary to the effective prosecution of the war.

XVIII

That plaintiffs allege, as a matter of law, that the report and findings of the Commission are erroneous and improper, inasmuch as they fail to reflect that the evidence and proof in the record show undisputedly that the railroads operating in Tennessee are earning excess profits. It is alleged, as a matter of law, that the National Transportation Policy, as stated in the Interstate Commerce Act and particularly in Section 15a (2) thereof is to be read in the light of other legislative acts which enunciate national policy. Legislation has been enacted which provides for excess profits taxes, and this tax

embodies a legislative pronouncement of national policy. In its failure to except railroads from the application of such excess profits taxes, Congress wrote into The National Transportation Policy a declaration by inference, that the development and preservation of a national transportation system by rail, highway, and water does not require nor call for excessively high profits for the railroads during the period of war, as compared with the average earnings for the base period for the years from January 1, 1936, to January 1, 1940, this period being the base by which excessive profits are to be measured in order that excess profits taxes may be imposed. The record in the present case shows that during the base years referred to there were net railway operating deficits from the passenger operations of the eight principal Tennessee railroads herein, these aggregate deficits being in the following amounts: 1936, deficit, $19,290,859; 1937, deficit, $17,838,577; 1938, deficit, $19,566,771; and 1939, deficit, $19,972,298. Accordingly, the average net railway operating deficit for these four base years was approximately $19,167,126. The record also shows that the net railway income from passenger operations of these eight principal carriers for the year 1942 was $11,802,470. Accordingly, the record indicates that the excess profits derived from the war by these eight railroads are more than $30,000,000. Under these circumstances, any additional amount which the said carriers would derive as the result of an increase of intrastate fares would simply enhance these excessive earnings and unreasonable profits of the carriers. The legislative pronouncement as to fair profits and fair returns in wartime is embodied in the Excess Profits Tax Act of 1942, and by this criterion the carriers in Tennessee are earning from their passenger operations far in excess of a fair and adequate return, and, indeed, are earning excessive profits.

XIX

That plaintiffs allege, as a matter of law, that the report, findings and conclusions of the Commission are erroneous in the following respects: the plaintiffs made the contention on the hearing before the Interstate Commerce Commission that the added expense of

operation of the railroads due to their movement of troop trains is interstate in nature, and that such increases in the cost of interstate traffic may not properly be used to support a finding that intrastate traffic does not produce its fair share of the earnings required by respondent carriers to enable them to provide adequate and efficient railway transportation service. The Commission erroneously ignored this contention and the evidence introduced to support same; however, as to the same contention advanced by the Alabama Commission in the companion Alabama case, which is treated in the same report and findings, the Commission made the following finding, conclusion, and statement on Sheet 15, Exhibit B:

> Protestant points out that much of the added expense of the operations of some of respondents arises in connection with or is due to the movement of troop trains, and that these are interstate movements; and it contends that civilian intrastate fares should not be increased to assist in bearing that burden. To concede the correctness of this contention might be to impair the effectiveness of the provisions of section 15a relative to adequate and efficient railway service, and to defeat the national transportation policy as declared in 54 Stat. L. 899, relative to developing, coordinating, and preserving a national transportation system adequate to meet the needs of the commerce of the United States, of the postal service, and of the national defense, and requiring that all of the provisions of the Interstate Commerce Act shall be administered and enforced with a view to carrying out the stated declaration of policy.

Plaintiffs allege that the foregoing finding must be accepted as the finding which the Commission applies to the same contention in Tennessee and that this finding is erroneous and not supported by the law and facts, and accordingly the order based upon said finding is unconstitutional and in violation of the Tenth Amendment to the Constitution of the United States. Plaintiffs allege that it is necessary before the Interstate Commerce Commission can proceed to set aside intrastate rates as a burden upon interstate commerce, that a finding be made, supported by the record, that these rates do not contribute their fair share of the cost of rendering adequate and

efficient transportation service. The record in this case undisputedly discloses that the expense of transportation service is high at present because of the large expense of rendering the interstate troop train service; accordingly, this is not a part of the expense which lawfully is to be charged to the fair share of intrastate expense. The defendant Commission made the following findings on Sheets 8 and 9, Exhibit B, as to increased expenses due to movement of troop trains, these findings conclusively showing that the Commission based its order upon such increased expenses due to interstate troop movements:

> Wartime operations have placed added burdens on the passenger departments and facilities of respondents and resulted in unusual expenses, such as for safeguarding operations and providing expedited movements of troop trains. For example, during November 1943, the Southern operated 353 troop trains, and 1,178 cars with troops were operated by it in regular trains. A special representative of the railroad rides each troop train. Much dead-head movement of equipment is necessary in assembling cars for these troop movements and in returning them to the points where they will again be needed, and additional terminal switching costs are incurred. Troop movements are given preference over all freight trains and certain passenger trains, and this occasions delays to freight and passenger trains, with resulting increased costs in wages and fuel therefor. Some of these expenses are reflected in the freight accounts of respondents. Their general offices must be kept open in some instances 24 hours a day and in others from 12 to 16 hours in order to make provision for troop movements, thus requiring the services of a greater number of employees and resulting in increased expenses. On troop movements the Government does not pay the full published fare, but is allowed a discount of 5 percent from commercial fares, except where the movement is by a route over which land-grant deductions are applicable, in which event the deduction allowed is 50 percent of the commercial fare, plus a further deduction of 3 percent. There is no land-grant mileage in North Carolina, Kentucky, or Tennessee, but there is considerable such mileage in Alabama.

The record in the cause sustains the fact that such increased expenses have been incurred and also that the entire movement of troop trains in Tennessee was interstate, there being virtually no intrastate movement of troop trains within the state. It is alleged, as a matter of law, that all of such increased expense must properly be charged to interstate operations, and intrastate operations are not to be burdened by this additional expense as this is not a part of their fair share of the earnings required by the respondent carriers to enable them to provide adequate and efficient railway transportation service, both interstate and intrastate.

XX

That plaintiffs allege, as a matter of law, that the second specific finding of the Commission, on Sheet 20, Exhibit B hereto, in which it is found that the Tennessee intrastate coach fares are lower than the corresponding interstate and certain intrastate coach fares in southern territory, is inadequate and insufficient in and of itself to support the corrected order of the Interstate Commerce Commission. The mere existence of a disparity between fares on intrastate and interstate traffic does not justify the defendant Commission in overriding the lawful order of the Railroad and Public Utilities Commission of the State of Tennessee and prescribing intrastate rates. Plaintiffs allege, as a matter of law, that taken as a whole the findings of the Interstate Commerce Commission are not sufficient to support the order herein sought to be enjoined.

XXI

That if the order herein sought to be enjoined, set aside, and annulled should become effective, plaintiffs would suffer immediate and irreparable injury and damage, in that the powers and jurisdiction of the State of Tennessee, reserved to it under the provisions of the Tenth Amendment to the Constitution of the United States, and the delegated powers and jurisdiction of the Railroad and Public

Utilities Commission of the State of Tennessee, guaranteed by the Constitution of the United States, to regulate the rates for intrastate transportation of passengers in Tennessee, would be destroyed, nullified, and subverted; likewise, Tennessee coach passengers would suffer irrevocable loss and damage, in that they would have no means of recovering from the Tennessee railroads the increases in transportation charges, which increases in the aggregate amount to more than $550,000 annually.

WHEREFORE, and in consideration of the premises, plaintiffs pray:

1. That process in due form issue against the defendants, the United States and the Interstate Commerce Commission, and be served, together with copy of this complaint and the exhibits thereto attached, upon the United States Attorney for the Western District of Kentucky, upon the Department of Justice of the United States at Washington, District of Columbia, and upon the Interstate Commerce Commission at Washington, District of Columbia.

2. That the Court temporarily restrain or suspend the corrected order of the Interstate Commerce Commission dated May 8, 1944, and effective July 1, 1944, as provided in Section 46, Title 28 of the United States Code, in order that the plaintiffs herein may not suffer an irreparable injury and that the intrastate passengers by rail within the State of Tennessee may not suffer an irreparable loss and injury.

3. That a three-judge court be convened, as provided by statute and that a hearing be granted in due season to the end that irreparable damage to the plaintiffs and to intrastate passengers by rail within the State of Tennessee may be prevented by the issuance of a temporary restraining order and an interlocutory injunction.

4. That an interlocutory injunction, in addition to a temporary stay of the Commission's order as aforesaid, be issued restraining,

inhibiting, and enjoining the United States and the Interstate Commerce Commission from enforcing and executing said corrected order of the Interstate Commerce Commission dated May 8, 1944, and effective July 1, 1944.

5. That on the hearing of this cause a permanent injunction be issued restraining, inhibiting and enjoining the enforcement, operation, and execution of said corrected order of the Interstate Commerce Commission.

6. That the corrected order of the Interstate Commerce Commission, dated May 8, 1944, and set forth as Exhibit A hereof, be set aside and annulled.

7. That the Court grant such other, further, and general relief as the plaintiffs may be entitled to in the premises.

LEON JOUROLMON, JR.
123 Memorial Building,
Nashville, Tennessee
Attorney for Plaintiffs

STATE OF TENNESSEE
COUNTY OF DAVIDSON } Set:

Porter Dunlap, being duly sworn, deposes and says that he is the Chairman of the Railroad and Public Utilities Commission of the State of Tennessee; that he is authorized and empowered to make this affidavit on behalf of plaintiffs; that he has read the foregoing complaint and knows the contents thereof; and that the same are true, as he verily believes.

PORTER DUNLAP

Subscribed and sworn to before me by Porter Dunlap on the 9th day of June, 1944.

My commission expires OCT 4 1947

REBECCA McDANIEL
Notary Public

In the District Court of the United States

For the Western District of Kentucky

THE STATE OF TENNESSEE and PORTER DUNLAP, LEON JOUROLMON, JR., and JOHN C. HAMMER, Constituting the RAILROAD AND PUBLIC UTILITIES COMMISSION of the STATE OF TENNESSEE

Plaintiffs

Versus

THE UNITED STATES and the INTERSTATE COMMERCE COMMISSION

Defendants

EXHIBITS

INDEX OF EXHIBITS

EXHIBIT A—Corrected Order of the Interstate Commerce Commission, May 8, 1944 1

EXHIBIT B—Findings and Conclusions of the Interstate Commerce Commission, March 25, 1944 4

EXHIBIT C—Order of Interstate Commerce Commission denying reconsideration, May 8, 1944 48

EXHIBIT D—Order of Railroad and Public Utilities Commission, August 30, 1943 49

EXHIBIT E—Transcript of the Record in Docket No. 29037, Tennessee Intrastate Fares 56

Reproductions of Original Exhibits filed in *Docket No. 29037, Tennessee Intrastate Fares* .. 331

EXHIBIT A

CORRECTED ORDER

At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D. C., on the 8th day of May, A.D. 1944.

No. 28963

ALABAMA INTRASTATE FARES

No. 29000

KENTUCKY INTRASTATE FARES

No. 29036

NORTH CAROLINA INTRASTATE COACH FARES

No. 29037

TENNESSEE INTRASTATE FARES

These proceedings having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been made, and the Commission, on March 25, 1944, having made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof; and

It appearing, That as set forth in said report, and in accordance with the practice in such proceedings, the Commission left to respondents herein and the respective State Commissions, for a period of 30 days from March 30, 1944, the date of service of said report, the matter of adjusting the intrastate passenger fares under consideration in these proceedings to conform to the findings and conclusions made in said report, and that no such adjustment of the said intrastate fares has been made or authorized by the respective State Commissions:

It is ordered, That respondents in each of these proceedings, according as they participate in the transportation, be, and they are hereby, notified and required to cease and desist, on or before July 1, 1944, upon notice to this Commission and to the general public by not less than 30 days' filing and posting in the manner prescribed in section 6 of the Interstate Commerce Act, and thereafter to abstain, from practicing the undue prejudice and preference and the unjust discrimination found in said report to exist.

It is further ordered, That said respondents, according as they participate in the transportation, be, and they are hereby, notified and required to establish, on or before July 1, 1944, upon notice to this Commission and to the general public by not less than 30 days' filing and posting in the manner prescribed in section 6 of the Interstate Commerce Act, and thereafter to maintain and apply, passenger fares for intrastate transportation in the respective States which shall be on bases no lower than the

passenger fares presently maintained and applied by the respective respondents for like accommodations in interstate transportation to, from, and through the respective States; provided, that the resulting aggregate charge made by any of said respondents for intrastate transportation in any of the States shall not exceed the aggregate charge made for like accommodations and for a like distance by the same respondent in interstate transportation to, from, or through such State.

And it is further ordered, That this order shall continue in force until the further order of the Commission.

By the Commission.

(SEAL) W. P. BARTEL, Secretary.

EXHIBIT B

INTERSTATE COMMERCE COMMISSION

No. 28963[1]

ALABAMA INTRASTATE FARES

Submitted February 18, 1944 **Decided March 25, 1944**

Intrastate passenger fares in Alabama, Kentucky, North Carolina, and Tennessee, where lower than the corresponding interstate fares, found to cause undue advantage, preference, and prejudice as between persons in intrastate commerce on the one hand and interstate commerce on the other, and unjust discrimination against interstate commerce.

William C. Burger, Charles Clark, Joseph P. Cook, James B. Gray, Frank W. Gwathmey, Y. D. Lott, Jr., Edward D. Mohr, W. A. Northcutt, L. L. Oliver, and *Charles P. Reynolds* for respondents.

Hugh White, W. C. Harrison, Gordon Persons, J. G. Bruce, and *Norwood Johnson* for Alabama Public Service Commission; *Hubert Meredith* and *M. B. Holifield* for Commonwealth of Kentucky; *Frank L. McCarthy, Jack E. Fisher, Mrs. John W. Langley,* and *J. E. Marks* for Railroad Commission of Kentucky; *Stanley Winborne, Fred C. Hunter, R. G. Johnson, F. C. Hillyer,* and *H. M. Nicholson* for North Carolina Utilities Commission; and *Leon Jourolmon, Jr.,* and *J. O. Hendley* for Railroad and Public Utilities Commission of Tennessee.

[1]This report also embraces No. 29000, Kentucky Intrastate Fares; No. 29036, North Carolina Intrastate Coach Fares; and No. 29037, Tennessee Intrastate Fares.

M. D. Miller, George J. Burke, David F. Cravers, Warren Price, Jr., Richard H. Field, and *Bernard M. Fitzgerald* for Price Administrator and Economic Stabilization Director.

James E. Burkett, W. R. McDonald, Crawford L. Pilcher, A. J. Young, Frank L. McCarthy, J. E. Marks, W. H. Amerine, F. C. Hillyer, and *Henry M. Johnson* for other interveners.

REPORT OF THE COMMISSION

BY THE COMMISSION:

These proceedings were heard and briefed separately, but were orally argued together. They embody similar issues, upon which the evidence adduced in the respective proceedings is substantially similar, and will be disposed of in one report.

They are investigations instituted upon petitions by the rail carriers operating, respectively, in Alabama, Kentucky, North Carolina, and Tennessee, to determine whether the refusal of the

*[Docket No. 28963—Sheet 2]

regulatory authorities of those States to authorize or permit the application to the transportation of passengers traveling intrastate therein of fares and charges corresponding to those established for interstate application on October 1, 1942, causes any undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce on the one hand, and interstate or foreign commerce on the other, or any undue, unreasonable, or unjust discrimination against interstate or foreign commerce; and to determine what fares and charges, if any, or what maximum or minimum or maximum and mini-

mum fares and charges, should be prescribed to remove such advantage, preference, prejudice, or discrimination, if any, as might be found to exist. All common carriers by railroad operating within Alabama, Kentucky, North Carolina, and Tennessee subject to our jurisdiction were made respondents, and those States were notified of these proceedings.

The regulatory Commissions of the respective States intervened each in the proceeding wherein lies its chief interest; the Price Administrator in behalf of himself and the Director of Economic Stabilization intervened in all of the proceedings; and several other persons or associations of persons or corporations appeared in one or more of the proceedings to protest against any increase in fare.

History of Rail Fares.—In southern passenger association territory, hereinafter referred to as southern territory, which generally speaking is that territory east of the Mississippi River and south of the Ohio and Potomac Rivers, the basis of one-way fares from April 1, 1908, to June 9, 1918, was generally 2.5 cents per mile in all classes of equipment. On June 10, 1918, under an order of the Director General of Railroads, the fare was increased to 3 cents per mile in all classes of equipment. This fare remained in effect until August 25, 1920, but during the period June 10 to November 30, 1918, an additional charge of 16-2/3 percent of the one-way fare was assessed for travel in sleeping and parlor cars. From August 26, 1920, to November 30, 1933, the fare generally was 3.6 cents per mile in all classes of equipment, plus a surcharge on transportation in sleeping and parlor cars on and after December 1, 1918, of 50 percent of the charge made for space occupied in such cars.

During 1932 and 1933 certain of the carriers operating in southern territory experimented with fares lower than 3.6 cents in attempts to attract additional passenger business in competi-

tion with transportation by private automobiles and in busses. For example, from April 1 to November 30, 1933, experimental one-way fares of 3 cents per mile in sleeping or parlor cars, without a surcharge, and 2 cents per mile in coaches, were maintained by the Atlanta and West Point Rail Road Company, The Western Railway of Alabama, Mobile and Ohio Rail Road Company (now part of the Gulf, Mobile and Ohio Railroad Company), Louisville and Nashville Railroad Company, and The Nashville, Chattanooga & St. Louis Railway. During the same period the Southern Railway System lines were experimenting with coach fares of 1.5 cents per mile on certain portions of their lines.

On December 1, 1933, most of the lines in southern territory established experimental fares of 3 cents per mile in sleeping and parlor cars, without a surcharge, and 1.5 cents per mile in coaches, which remained in effect through November 14, 1937. However, a number of railroads kept their one-way coach fares at 2 cents per mile during this period, but met the 1.5-cent fares

*maintained by other roads where competition made that necessary. Among the lines which retained the 2-cent coach fare during this period were the Illinois Central Railroad Company, Mobile & Ohio, and the St. Louis-San Francisco Railway Company (J. M. Kurn and Frank A. Thompson, Trustees).

In *Passenger Fares and Surcharges*, 214 I.C.C. 174, decided February 28, 1936, we reviewed railroad passenger fares throughout the nation, and found the basic fares to be unreasonable. We prescribed maximum reasonable fares of 2 cents per mile, one way and round trip, in coaches, and 3 cents per mile, one way and round trip, in standard pullman cars, without prejudice to the maintenance of lower fares in coaches or pullman cars.

The pullman surcharge was found unreasonable and its cancellation was required. The existing experimental fares in southern territory were found not unreasonable or otherwise unlawful.

On November 15, 1937, the carriers which had been maintaining the experimental coach fare of 1.5 cents increased that fare to 2 cents per mile, but restored the 1.5-cent fare on January 15, 1939. Again, certain of the southern lines, including the Illinois Central, Mobile & Ohio, St. Louis-San Francisco, and Norfolk and Western Railway Company, retained the 2-cent fare basis.

By order of January 21, 1942, in Ex Parte No. 148, we found that a nation-wide increase of 10 percent in fares proposed by the railroads was necessary to enable the petitioners to continue to render adequate and efficient transportation service during the national emergency, and that the proposed increased fares would be reasonable and otherwise lawful. See *Increased Railway Rates, Fares, and Charges, 1942*, 248 I.C.C. 545, 565, 566, where the foregoing findings were renewed and affirmed.

The reestablished coach fares of 1.5 cents remained in effect until February 10, 1942, on which date the 10 percent increase in fares for transportation in both coaches and pullman cars became effective. On that date fares of 1.5 cents became 1.65 cents; fares of 2 cents became 2.2 cents; and fares of 3 cents became 3.3 cents. The round-trip fares were modified to reflect the increase in the one-way fares. On various subsequent dates these increased fares also became effective on intrastate traffic in all of the States.

On July 14, 1942, the railroads operating in southern territory filed with us a petition for authority to increase their lower fares for interstate one-way transportation in coaches in that territory to 2.2 cents a mile, the basis of the coach fares then in

effect generally throughout the remainder of the United States. Having found in *Passenger Fares and Surcharges, supra,* that 2 cents per mile was a reasonable basic coach fare for application on railroads generally throughout the country, including the lines of petitioners, we authorized petitioners by our order of August 1, 1942, to apply the increase of 10 percent approved in Ex Parte No. 148 to a basic fare of 2 cents per mile, and modified accordingly the original order in the latter proceeding. Pursuant to that authority, one-way coach fares of 2.2 cents a mile were published to become effective October 1, 1942, on interstate traffic. Effective on the same date the railroads generally

*[Docket No. 28963—Sheet 4]

*throughout southern territory, published a uniform basis of interstate round-trip fares to displace the round-trip fares theretofore in effect, namely, in coaches on the basis of 180 percent of the one-way fare of 2.2 cents, or 1.98 cents a mile with a return limit of 3 months; and in sleeping and parlor cars on the basis of 166-2/3 percent of the one-way fare of 3.3 cents in such cars, or 2.75 cents a mile, with a return limit of 3 months. The increased fares proposed for application in southern territory were protested and suspension of their operation was requested by the Price Administrator, but we declined to suspend. The fares so increased are now in effect on interstate traffic.

Thereafter, with the approval of the rate regulatory authorities of those States, the intrastate one-way and round-trip coach fares and the round-trip fares in sleeping and parlor cars were increased to the respective levels of the corresponding interstate fares in Florida, Georgia, Louisiana, Mississippi, Virginia, and South Carolina, and the round-trip fares in sleeping and parlor cars were increased to the level of the interstate fares in such cars in North Carolina and Kentucky. The rate regulatory au-

thorities of Alabama, North Carolina, Tennessee, and Kentucky have declined to authorize the increases sought by the railroads in one-way and round-trip coach fares in those States, and the rate regulatory authorities of Alabama and Tennessee have also refused to authorize the increases in the round-trip fares in sleeping and parlor cars. It is those fares in the four States last named which are here under investigation.

As a basis for a finding of violation of section 13(4) of the act, the interstate fares must be shown to be reasonable. *Georgia Public Service Comm.* v. *United States*, 283 U. S. 765; *United States* v. *Louisiana*, 290 U. S. 70. Therefore, before proceeding to a consideration of the evidence submitted in the respective proceedings bearing directly upon the issues under section 13(4), we shall first consider the evidence bearing upon the reasonableness of the interstate fares.

LEVEL OF THE INTERSTATE FARES

Comparing the interstate one-way coach fare of 2.2 cents with basic fares in effect at various times during the period from April 1, 1908, to November 30, 1933, it will be seen that the fares in effect from April 1, 1908, to June 9, 1918, were 13.6 percent higher than the present fares; those in effect June 10, 1918, to August 25, 1920, were 36.4 percent higher; and those in effect August 26, 1920, to November 30, 1933, were 63.6 percent higher. The 1.5-cent fare in effect from December 1, 1933, to November 14, 1937, and from January 15, 1939, to February 9, 1942, was a subnormal fare maintained primarily to attract traffic that had been diverted chiefly to private automobiles.

When in *Passenger Fares and Surcharges, supra*, in 1936, we reduced the basic interstate coach fares throughout the nation from 3.6 to 2 cents, we gave consideration to the element of what

the traffic will bear in the light of the competition from private automobiles (page 231), and in our summary of fact findings said (page 255):

*[Docket No. 28963—Sheet 5]

*9. Changed economic conditions, including reduced commodity prices and average income, together with the generally cheaper cost and greater convenience of travel by highway, have so affected the value of the rail passenger service to the public that a fare basis which was reasonable maximum before severe highway competition, and especially before the fall in recent years in commodity prices and average income, is out of harmony with present-day conditions.

Economic conditions since then have greatly changed, and the railroads today, instead of trying to attract passenger traffic, are endeavoring to discourage unnecessary travel, and are cooperating with the Office of Defense Transportation in its effort to avoid the rationing of passenger travel. As hereinabove mentioned, in our order of January 21, 1942, we found that the increased fares would be reasonable, and affirmed that finding in our report of March 2, 1942. In a report on further hearing, 255 I.C.C. 357, decided April 6, 1943, wherein we suspended the operation of the increases that had been authorized on freight rates, we declined to suspend their operation on passenger fares. We there found, pages 394-5:

Governmental authorities, particularly the Office of Defense Transportation, have urged the public not to travel except when the journey is related to the war effort or is for an essential purpose. A reduction in the standard passenger fares would tend to encourage travel which

is unnecessary and unrelated to the prosecution of the war. With passenger facilities taxed to their capacity, any substantial increase in such unnecessary travel inevitably would hasten the rationing of passenger travel.

We found, further, that passenger traffic had failed for many years to pay its proper share of railway expenses, and that only with a large volume of passenger traffic was the 1942 passenger deficit currently eliminated as to most of the railroads. Respondents herein presented statistics of their revenues, expenses, and income, together with other data, designed to support that finding as to them.

The aggregate net railway operating income or deficit from passenger operations of the 5 principal respondents in No. 29036 for recent years was as follows:

1936, deficit	$10,997,768
1937, deficit	10,231,812
1938, deficit	12,916,499
1939, deficit	12,464,628
1940, deficit	12,548,190
1941, deficit	3,436,130
1942, income	24,630,302
Average, deficit	5,423,532

Two of these respondents[2] had a deficit from passenger opera-

*[Docket No. 28963—Sheet 6]

tions in 1942. The freight and passenger operating ratios, respectively, of 6 of the respondents in that proceeding averaged as follows: 1936, 65 and 120; 1937, 67 and 117; 1938, 67 and

[2] Carolina, Clinchfield and Ohio Railway, $84,999; Norfolk Southern Railway Company, $134,600.

125; 1939, 64 and 124; 1940, 64 and 123; 1941, 60 and 101; and 1942, 55 and 63.

The passenger operating revenues of the 5 principal respondents in that proceeding during the 12 months ended October 31, 1943, were substantially greater than those for the year 1942. As estimated by witness for the Price Administrator, the passenger operating ratio of those respondents and of respondents Louisville & Nashville and Norfolk and Western Railway Company for the first 9 months of 1943, unlike that for 1942, was somewhat more favorable than the freight operating ratio of these roads for the same period. That protestant also submitted evidence intended to show that, on their combined freight and passenger operations for the 12 months ended October 31, 1943, these 7 respondents are earning before Federal income taxes more than a fair return on various book investment bases computed by his witness, and are not in need of the additional revenue which the proposed increased intrastate fares are expected to produce.

The net railway operating income from passenger operations of the 12 principal respondents in No. 28963 is shown below:

1936, deficit	$30,134,958
1937, deficit	27,420,877
1938, deficit	32,463,290
1939, deficit	31,758,549
1940, deficit	32,933,304
1941, deficit	19,426,424
1942, income	31,566,377
Average, deficit	20,341,576

Two of these respondents[3] had a deficit in 1942. The freight

[3] Atlanta, Birmingham and Coast Railroad Company, $345,762; Gulf, Mobile & Ohio, $592,468.

and passenger operating ratios, respectively, of these 12 respondents averaged as follows: 1936, 67 and 126; 1937, 69 and 121; 1938, 68 and 128; 1939, 66 and 128; 1940, 67 and 127; 1941, 62 and 107; and 1942, 58 and 68. The passenger operating ratio of 1943 was lower than for 1942.

The aggregate net railway operating income from passenger operations of the 7 principal respondents in No. 29000 was as follows:

*[Docket No. 28963—Sheet 7]

*1936, deficit	$22,763,721
1937, deficit	21,078,023
1938, deficit	24,220,376
1939, deficit	24,189,043
1940, deficit	25,748,961
1941, deficit	18,387,738
1942, income[4]	11,118,537
Average, deficit	17,895,617

The freight and passenger operating ratios, respectively, of these respondents averaged as follows: 1936, 59 and 128; 1937, 63 and 130; 1938, 62 and 131; 1939, 61 and 132; 1940, 60 and 136; 1941, 57 and 115; and 1942, 56 and 74.

The aggregate net railway operating income from passenger operations of the 8 principal respondents in No. 29037 appears below:

1936, deficit	$19,290,859
1937, deficit	17,838,577
1938, deficit	19,566,771

[4]Respondents' exhibit shows a deficit for the Chesapeake & Ohio Railway Company of $1,562,533. However, the annual report of that respondent to this Commission shows a profit of $434,381.

1939, deficit	19,972,298
1940, deficit	21,587,906
1941, deficit	14,225,973
1942, income	11,802,470
Average, deficit	14,239,972

Four of these respondents[5] had a deficit in 1942. The freight and passenger operating ratios, respectively, of 11 of the respondents in No. 29037 averaged as follows: 1936, 65 and 129; 1937, 68 and 124; 1938, 66 and 131; 1939, 65 and 132; 1940, 64 and 133; 1941, 60 and 111; and 1942, 58 and 72.

The passenger coach revenues of all class I railroads in the southern region[6] for the first 7 months of 1943 were substantially in excess of those for the corresponding months of 1942 and 1941, and the increases in the revenues from coach traffic were greater than the increases during the same period in the revenues of these railroads from sleeping and parlor car fares. So, also, for the first 10 months of 1943, the latest available statistics of this kind, which were stipulated of record by the parties at the oral argument, the increase in the passenger coach revenues of these carriers over those for the corresponding period of 1942 was 128.5 percent, as compared with an increase of 30.2 percent in the parlor and sleeping-car revenues.

*[Docket No. 28963—Sheet 8]

*The statistics in the regular monthly reports as made to us by the class I railroads were made a part of the record by stipu-

[5]Illinois Central, $578,425; Tennessee Central Railway Company, $84,185; Gulf, Mobile & Ohio; and Clinchfield.

[6]The boundaries of the southern region are generally the same as those of southern passenger association territory, except that the southern region does not embrace any portion of Virginia or West Virginia.

lation at the oral argument. The latest such reports now on file with and available to us are for the month of December, 1943. Compared with the same month in 1942, that month resulted in an increase of 0.2 percent in freight revenue and 32.8 percent in passenger revenue for the southern region and 7.4 and 27.2 percent, respectively, for the country, but in a reduction in net railway operating income from all rail operations of 61.4 percent for the southern region and 55.9 percent for the country. For the year 1943 the increase over 1942 was 13.3 percent in freight revenue and 67.9 percent in passenger revenue for the southern region and 14.1 and 60.8 percent, respectively, for the country, but the net railway operating income fell below that for 1942 by 9 and 8.3 percent, respectively. The monthly increases over the corresponding months of the preceding year in the passenger revenues of the railroads of the country, including those in the southern region, have been quite steadily declining. Thus, in July, 1943, that increase was 74.4 percent for the southern region and 70.4 percent for the country, and in December of that year it was 32.8 and 27.2 percent, respectively. Also, the net railway operating income has steadily declined from a deficit compared with that for the same month of the preceding year of 12.1 percent for the southern region and 9.7 percent for the country in July, to 61.4 and 55.9 percent, respectively, for December; so that, due to increased expenses and taxes, the net railway operating income of the railroads in the southern region dropped from $28,578,717 in December, 1942, to $11,035,492 in December, 1943.

During recent years the principal respondents herein have expended large sums of money in remodeling and air-conditioning their passenger equipment. For example, the Southern has air-conditioned or purchased new, with air-conditioning facilities, 189 coaches. It has purchased 6 two-car Diesel units and 16 Diesel-powered locomotives for passenger-train service. The

Seaboard has air-conditioned and modernized 71 coaches and 23 combination passenger and baggage cars and 33 dining cars.

Wartime operations have placed added burdens on the passenger departments and facilities of respondents and resulted in unusual expenses, such as for safeguarding operations and providing expedited movements of troop trains. For example, during November, 1943, the Southern operated 353 troop trains, and 1,178 cars with troops were operated by it in regular trains. A special representative of the railroad rides each troop train. Much dead-head movement of equipment is necessary in assembling cars for these troop movements and in returning them to the points where they will again be needed, and additional terminal switching costs are incurred. Troop movements are given preference over all freight trains and certain passenger trains, and this occasions delays to freight and passenger trains, with resulting increased costs in wages and fuel therefor. Some of these expenses are reflected in the freight accounts of respondents. Their general offices must be kept open in some instances

*[Docket No. 28963—Sheet 9]

24 hours a day and in *others from 12 to 16 hours in order to make provision for troop movements, thus requiring the services of a greater number of employees and resulting in increased expenses. On troop movements the Government does not pay the full published fare, but is allowed a discount of 5 percent from commercial fares, except where the movement is by a route over which land-grant deductions are applicable, in which event the deduction allowed is 50 percent of the commercial fare, plus a further deduction of 3 percent. There is no land-grant mileage in North Carolina, Kentucky, or Tennessee, but there is considerable such mileage in Alabama.

The large increase in passenger traffic has made necessary a marked expansion of ticket-selling forces. Most of the through trains are operated in two sections, requiring the use of two full crews; additional ticket helpers and porters have been employed on all through trains; and at the principal passenger terminals train-dispatching, platform, switching, roadway, mechanical, and equipment-repair forces have been greatly augmented. Because of the war, respondents are experiencing great difficulty in obtaining competent help.

The average hourly rate of compensation in 1942 of all employees of the principal respondents in these proceedings ranged from about 24 to 27 percent higher than in 1936. At the time of the hearings there were pending demands by the railroad operating and non-operating unions for wage increases, including the retroactive application of certain of such increases to February 1, 1943. We may notice officially that wage increases have since been granted and are now being paid. Since we prescribed the 2-cent basic coach fare as reasonable in 1936, there has been a substantial increase in the cost of materials and supplies used by railroads in the southern region, ranging from 22 percent for iron and steel products to 48 percent for lumber and other forest products. Also, since then the railway tax accruals of respondents have greatly increased. For example, those of the 14 respondents in No. 28963 increased, in round figures, from $34,400,000 in 1936 to $170,500,000 in 1942, or by 395 percent. Such accruals apportioned to the passenger service of 12 of those respondents, under our formula, increased in those years by 244 percent.

On or about October 1, 1942, upon request of the Government, respondents and other railroads generally established for both interstate and intrastate travel reduced round-trip coach fares on the basis of 1.25 cents a mile, available only to personnel of the Army, Navy, Marine Corps, Coast Guard, Women's Naval

Reserves, Women's Army Corps, Women's Coast Guard Reserves, and Women's Marine Corps Reserves, traveling in uniform and at their own expense when on official leave, furlough, or pass; also to nurses when not traveling in uniform, upon presentation of proper identification, and under similar conditions to personnel of the military forces of the allied nations. Respondents do not propose to increase any of those fares.

*[Docket No. 28963—Sheet 10]

*The large increase in the passenger traffic and revenues of these respondents in the last two years, over the years prior to 1942 when they were incurring deficits from their passenger operations, was similar to that in the same years on practically all of the railroads of the country. The important facts in that respect differ little from those found in our report on further hearing in Ex Parte No. 148. We there pointed out that many of the factors making for increased passenger travel apparently would continue in 1943, such as inductions into the armed forces of great numbers of persons and the travel of men and women in the armed services and their relatives, together with greatly increased movement of Army troop trains. The prospect of further increases in rail passenger traffic and revenues was thus recognized and considered by us in reaching our conclusion that no modification of our previous findings, orders, and authorizations respecting these fares was necessary.

In July, 1943, the North Carolina Utilities Commission filed with us a petition for a general investigation on our own motion of the lawfulness of the interstate coach fares to, from, and through North Carolina. That petition, together with petitions dated July 31, 1943, of the Price Administrator and August 27, 1943, of the Alabama Public Service Commission for a general investigation of the reasonableness, under present conditions, of

the interstate coach fares of all of the railroads in southern territory, was denied by our order of October 11, 1943. The present interstate fares, one-way and round-trip, are either the equivalent of, or are less than, the maximum basic fares found reasonable in *Passenger Fares and Surcharges, supra*, plus the 10 percent increase authorized in Ex Parte No. 148. These one-way fares are now in effect on interstate and intrastate traffic throughout the entire country, except intrastate in these four states, and the round-trip fares are now in effect on interstate and intrastate traffic throughout all of southern territory, except intrastate in the several States the fares in which are here before us. It is a well-settled rule that the most helpful evidence in determining the reasonableness of rates or fares is comparison with other rates or fares for like services. The record does not warrant any modification of our conclusion in the report on further hearing in Ex Parte No. 148 with respect to the passenger fares of these respondents.

*[Docket No. 28963—Sheet 11]

*THE RELATION OF THE INTRASTATE FARES

The intrastate fares in Alabama, Kentucky, North Carolina, and Tennessee, with certain exceptions about to be mentioned, were on the same basis as the interstate fares for more than 34 years prior to October 1, 1942. From April 1, 1908, to June 9, 1918, the basis of the one-way intrastate and interstate fares was 2.5 cents a mile in all classes of equipment. On June 10, 1918, under an order of the Director General of Railroads, that fare basis was increased to 3 cents and so remained until August 26, 1920. On that date the interstate fare, and shortly thereafter the intrastate fares, became 3.6 cents in all classes of equipment, plus a surcharge for passengers traveling in sleeping and parlor cars of 50 percent of the charge for space occupied in such

cars. This basis was continued until the above-mentioned experimentation with lower fares began in 1932 and 1933, and thereafter until October 1, 1942, the intrastate fares in all four of these States were generally on the same basis as the interstate fares.

On October 1, 1942, as stated, the interstate one-way fares became 2.2 cents in coaches and continued at 3.3 cents in sleeping and parlor cars, and the round-trip fares became 180 percent of the one-way fares with a return limit of 3 months for coaches and 166-2/3 percent of the one-way fares with a return limit of 3 months for parlor and sleeping cars. These are the interstate fares now in effect.

The Alabama intrastate one-way fares of respondents were, on October 1, 1942, and still are, 3.3 cents in sleeping and parlor cars and 1.65 cents in coaches, except that the Gulf, Mobile & Ohio, Illinois Central, and St. Louis-San Francisco maintain coach fares of 2.2 cents other than in instances where they meet the 1.65-cent fare of competing lines. On or about October 26, 1942, respondents in No. 28963 filed with the Alabama Public Service Commission tariffs to become effective December 1, 1942, to increase the basic one-way coach fare to 2.2 cents, making it uniform with that applicable for interstate travel, and to make effective intrastate the round-trip fares which had been established uniformly for interstate application on October 1. This proposal included cancelation of the 30-day limit round-trip fares then in effect intrastate on the basis of 2.475 cents per mile and the 6-months limit round-trip fares on the basis of 2.75 cents per mile, both good for transportation in sleeping and parlor cars; also cancelation of the 15-day limit round-trip coach fares on the basis of 1.485 cents per mile and the 60-day limit round-trip coach fares on the basis of 1.65 cents per mile. The Alabama Commission suspended operation of the tariffs and after a hearing issued its report and order on January 15, 1943, canceling

the suspended tariffs and denying respondents' proposal to make such fares and charges effective on intrastate traffic in Alabama.

The Kentucky intrastate one-way coach fares of respondents were on October 1, 1942, and still are, 1.65 cents, except that the Gulf, Mobile & Ohio and Illinois Central maintain coach fares of 2.2 cents other than in instances where they meet the 1.65-cent fare of competing lines, and the Chesapeake & Ohio maintains a fare of 2.2 cents, except on its Louisville-Winchester line. Re-

spondents in No. 29000 filed with the *Railroad Commission of Kentucky tariffs, to become effective December 1, to increase the basic one-way coach fare to 2.2 cents, making it uniform with that applicable for interstate travel, and to make effective intrastate the round-trip fares which had been established uniformly for interstate application on October 1. This proposal included cancelation of the 15-day limit round-trip coach fares on the basis of 1.485 cents per mile and the 60-day limit round-trip coach fares on the basis of 1.65 cents per mile, and substitution therefor of the 3-months limit round-trip fares on the basis of 1.98 cents per mile. The Kentucky Commission suspended operation of the tariffs, and after a hearing issued its report and order on May 31, 1943, denying respondents' proposal to make such one-way and round-trip coach fares and charges effective on intrastate passenger traffic in Kentucky, but approving proposed changes in round-trip fares for transportation in sleeping and parlor cars.

By petition filed October 12, 1942, with the North Carolina Utilities Commission, the several railroads operating in North Carolina, with the exception of the Norfolk & Western, sought authority to increase the intrastate one-way and round-trip coach

fares and the round-trip fares in sleeping and parlor cars in that State to the level of the interstate fares. The intrastate one-way and round-trip coach fares of the Norfolk & Western, which has about 100 miles of railroad in North Carolina, are the same as the interstate fares. The North Carolina Commission, by report and order of July 8, 1943, approved the proposed changes in the round-trip fares in sleeping and parlor cars, but deferred decision on the proposal to increase the fares in coaches pending further administrative action by it. As a result of that order, the present intrastate one-way coach fares in North Carolina are 1.65 cents a mile; and the intrastate round-trip coach fares in that State are 1.485 cents a mile with a return limit of 15 days, and double the one-way fare with a return limit of 60 days.

In Tennessee the operation of the tariffs published by the railroads proposing to increase all lower intrastate fares in that State to the level of the corresponding interstate fares was suspended by the Railroad and Public Utilities Commission of the State of Tennessee, and by its report and order of August 30, 1943, that Commission denied the railroads' proposal. As a result, the present intrastate one-way coach fares in Tennessee are 1.65 cents a mile, except that the one-way coach fares of the Illinois Central, Gulf, Mobile & Ohio, and St. Louis-San Francisco are 2.2 cents other than in instances where they meet the 1.65-cent fare of competing lines. The intrastate round-trip coach fares are 1.485 cents a mile with a return limit of 15 days, and double the one-way fare with a return limit of 60 days. The intrastate round-trip sleeping and parlor-car fares are 2.475 cents a mile with a return limit of 30 days, and 2.75 cents a mile with a return limit of 6 months.

Section 13(4) confers upon us the power to raise intrastate rates or fares to the reasonable interstate level upon a showing that the intrastate rates or fares cause either undue or unrea-

sonable advantage, preference, or prejudice as between *persons or localities in intrastate commerce on the one hand, and interstate or foreign commerce on the other, or undue, unreasonable, or unjust discrimination against interstate or foreign commerce.

Undue advantage, preference, or prejudice.—Respondents in each of these States are engaged in the handling of both intrastate and interstate passengers. Such passengers are carried on the same trains and generally in the same cars, but the interstate passengers have to pay higher fares than the intrastate passengers for corresponding distances. The differences in favor of the intrastate passengers range from 22 cents for 40 miles to $1.90 for 347 miles in coaches in each of the four States, and somewhat less in sleeping and parlor cars in Alabama and Tennessee. Thus, for example, from Columbus, Miss., to Anniston, Ala., 186 miles, the coach fare is $4.11, and from Sheffield, Ala., to Anniston, 193 miles, it is $3.30, a difference of 81 cents; from Lexington, Ky., to Columbus, Ohio, 197 miles, the fare is $4.44, as compared with a fare of $3.35 from Lexington to Owensboro, Ky., 199 miles, a difference of $1.09; from Charlotte, N. C., to Spartanburg, S. C., 75 miles, the fare is $1.65, whereas from Charlotte to Greensboro, N. C., 94 miles, it is $1.55, a smaller fare intrastate by 10 cents for a greater haul by 19 miles; from Chattanooga, Tenn., to Asheville, N. C., 240 miles, the fare is $5.32, and from Chattanooga to Bristol, Tenn., 242 miles, the intrastate fare is $4.05, a difference of $1.27.

So also, illustrations are of record showing differences between the fares over interstate and intrastate routes between points in the same State. Thus, between Piedmont, Ala., and Hurtsboro, Ala., the fare is $5.21 over the interstate route, 235.9 miles, and $4.05 over the intrastate route, 236.9 miles, a difference of $1.16. Between Memphis, Tenn., and Knoxville, Tenn.,

the fare over the interstate route is $9.39, and over the longer intrastate route it is $7.10, a difference of $2.29. Similar situations are exhibited with respect to the round-trip fares. They exist in each of the four States where and to the extent that the intrastate fares are on a lower basis than the interstate fares. It would serve no useful purpose to multiply such illustrations, for all are based upon the fact that the interstate fares are made on the basis of 2.2 cents per mile, while the intrastate fares are based on 1.65 cents per mile.

All trains operated by respondents in each of the States are available to and are used by both interstate and intrastate passengers, and the services accorded to both classes of passengers are substantially the same. The illustrations above given are typical of a condition which exists in some degree between interstate and intrastate passengers on every mile of track operated in passenger service by each of the respondents in all four of these States, excepting only those portions of respondents' lines on which the intrastate and the interstate bases are now the same.

Unjust discrimination.—On the basis of audits made for representative periods by the principal respondents in each of these

*[Docket No. 28963—Sheet 14]

proceedings, the estimated amount of additional revenue *which the respondents in the respective States would have received during those periods if the assailed intrastate fares had been on the interstate level, projected over the period of a year, exceeds $750,000 per annum in Alabama, $526,000 in Kentucky, $558,000 in North Carolina, and $556,000 in Tennessee.

The intrastate fares in each of the States may be used to defeat or break down the interstate fares and thereby reduce the revenues on interstate traffic. Thus, passengers destined to points

outside the respective States may now purchase intrastate tickets to points on or near the State line and either rebuy tickets or pay cash for the remainder of the journey. Technically, they break their journey when they leave the train at the points on or near the State line to purchase tickets for beyond the State, but practically they resort to a device which defeats the through fares. Typical illustrations are of record for each of the States, but one will suffice: The interstate coach fare between Raleigh, N. C., and Knoxville, Tenn., over the Southern is $8.91; the intrastate coach fare from Raleigh to Hot Springs, N. C., is $5.25, and that from Hot Springs to Knoxville is $2.05. By purchasing an intrastate ticket from Raleigh to Hot Springs and either purchasing a ticket at Hot Springs or paying cash for the remainder of the journey, a passenger traveling from Raleigh to Knoxville can thus save $1.61. So also, of course, passengers can avoid paying the higher interstate fares by using the cheaper intrastate routes between points in the same State, in instances such as those above referred to, from and to which there are both interstate and intrastate routes.

Specific evidence that the intrastate fares have been and are being used to defeat or avoid payment of the interstate fares in particular instances was not submitted, and admittedly is difficult to obtain. Respondents, however, are convinced that these practices are common; that their elimination would have an important effect upon the additional revenues which they would receive if the intrastate fares were on the same level as the interstate fares; and that they can be eliminated only by establishing such a parity.

An increase in the intrastate fares to the interstate level under existing conditions, respondents insist, will not result in any important loss of traffic to other forms of transportation and will produce increased revenues substantially equivalent to those estimated by them.

Protestants' Contentions and Evidence: Alabama.—Protestant Alabama Public Service Commission, by three State employees, two of whom are its own field inspectors, offered evidence of the crowded condition of trains, and the large number of passengers who as a result were required to stand. From this evidence protestant argues that the persons seated must have been

interstate passengers, and that intrastate *passengers receive an inferior service. One of the witnesses rode in the coaches of a Louisville & Nashville train from Mobile to Montgomery, Ala., every alternate Friday night, and for the preceding three months had not been able to obtain a seat. It was not shown that the train had not stopped at other Alabama stations before reaching Mobile, nor that other intrastate passengers boarding the train at Mobile did not obtain seats. It may be that on this particular train more long-haul, and hence more interstate, passengers than intrastate passengers were seated on the trip from Mobile to Montgomery. But the suggestion that the service accorded to intrastate passengers generally in Alabama on interstate trains is inferior to that accorded to interstate passengers is not supported by the evidence of record.

The present intrastate fares in Alabama appear to be somewhat higher than bus fares from and to the same points. From Birmingham to 12 destinations the average rail coach fare is $1.5275, the average proposed fare is $1.9975, and the average bus fare is $1.425; from Montgomery to 8 destinations the respective average fares are $1.985, $2.616, and $1.893. While the tendency of an increase in the coach fares, without a corresponding increase in the bus fares, would be to drive traffic to the busses, the latter are already experiencing as great or greater congestion than the trains.

Protestant points out that much of the added expense of the operations of some of the respondents arises in connection with or is due to the movement of troop trains, and that these are interstate movements; and it contends that civilian intrastate fares should not be increased to assist in bearing that burden. To concede the correctness of this contention might be to impair the effectiveness of the provisions of section 15a relative to adequate and efficient railway service, and to defeat the national transportation policy as declared in 54 Stat. L. 899, relative to developing, coordinating, and preserving a national transportation system adequate to meet the needs of the commerce of the United States, of the postal service, and of the national defense, and requiring that all of the provisions of the Interstate Commerce Act shall be administered and enforced with a view to carrying out the stated declaration of policy.

*[Docket No. 28963—Sheet 16]

*Kentucky.—Protestant Railroad Commission of Kentucky shows that the present intrastate one-way fares between representative points average 14.7 percent higher, and the proposed fares 40.7 percent higher, than the one-way bus fares from and to the same points, and the present and proposed round-trip fares average 9 and 41 percent higher than the round-trip bus fares. Differences in rail and bus fares are sometimes due to differences in distance.

Passenger traffic and revenues therefrom in Kentucky have increased in recent years, as indicated by reports of the 5 respondents in No. 29000 having approximately 96 percent of the total railroad mileage in Kentucky. Passenger revenues earned in Kentucky on intrastate and interstate traffic were $4,182,411 in 1939, $4,493,479 in 1940, $6,497,525 in 1941, and $14,023,436 in 1942. Passengers carried by the same railroads and for the

same years were 2,925,085, 3,065,609, 3,931,378, and 6,633,604. Passenger-miles increased from 230,594,000 in 1939 to 723,909,000 in 1942. The average number of passengers per car-mile was 10.6 for 1939 and 22.3 for 1942. As indicating the proportion of passenger revenues accruing in Kentucky which is derived from intrastate traffic only, for the Louisville & Nashville in 1939 the total was $2,200,241 and the intrastate $519,726, while the corresponding revenues for the Chesapeake & Ohio were $682,716 and $146,987.

Turning to the system figures for the 7 principal respondents, following is a comparison of 1942 and 1943, from the record as supplemented by stipulation of counsel at the argument: Freight revenues, $684,523,687 and $763,303,989; passenger revenues, $101,210,404 and $177,785,481; total operating revenues, $827,410,532 and $993,210,774; total operating expenses, $485,698,121 and $577,890,293; operating ratio, 58.7 and 58.2; and net railway operating income, $156,601,762 and $149,784,991.

Protestants point out that these 7 respondents in the last two years have been able to take care of their increases in operating expenses and railway tax accruals, and still show consistent and substantial increases in their net railway operating income. The relation of net railway operating income to investment in railway property including cash, materials, and supplies, for these respondents reflects average rates of return, after Federal income taxes, as follows: 1938, 2.98 percent; 1939, 3.76 percent; 1940, 3.95 percent; 1941, 5.41 percent; and 1942, 5.78 percent.

The Price Administrator, on behalf of himself and the Director of Economic Stabilization, opposes any increase in fares. He relies upon the facts that when passenger service was furnished at a loss, this Commission approved general levels of freight rates which took into consideration these passenger losses; *Fifteen Percent Case, 1937-1938*, 226 I.C.C. 41, 54; that

these returns from freight traffic have been multiplied during the war by greatly increased freight traffic; and that the passenger service itself is now returning a profit. It is therefore contended that either the passenger fares or the freight rates should be reduced.

If freight traffic is now producing more than a fair return for the above-mentioned or any other reason, it may be dealt with in an appropriate proceeding. The evidence here before us does not indicate that the passenger traffic of these respondents as a group is producing more than a fair return.

*[Docket No. 28963—Sheet 17]

*North Carolina.—In its brief and upon oral argument the North Carolina Commission contends that respondents in No. 29036 erred as a matter of law, in that they failed to exhaust their remedies before that Commission prior to filing their section 13 petition with us, on the ground that its order was interlocutory in form and was so issued in order that it might file with us the petition before mentioned for investigation of the interstate coach fares. It asserts that the matter was and still is open for consideration by it. The instant proceeding was not instituted until after we had fully considered the petition of the North Carolina Commission and had denied that petition. In view of this fact, and of the time which has elapsed since respondents petitioned that Commission on October 12, 1942, for authority to increase the intrastate coach fares in that State, we do not believe that we would be justified in deferring action in this proceeding and requiring respondents to renew their efforts before that Commission for authority to increase these fares. Moreover, the issues presented for our consideration here differ in important respects from those which are within the jurisdiction of that Commission, and our duty under the Interstate Com-

merce Act, as we see it, is to decide these issues on the record now before us.

This protestant contends that the intrastate coach fares in that State properly should be on a lower level than the interstate fares, and that the existing disparity between these fares does not result in undue preference or prejudice, nor in unjust discrimination against interstate commerce. A similar contention is made by protestants Charlotte Shippers and Manufacturers Association and the North Carolina Division of the Travelers Protective Association of America. The position of these protestants is that the intrastate coach service in North Carolina has deteriorated and is inferior to the interstate coach service in that State. Three of the principal respondents operate a limited number of modern streamlined air-conditioned coach trains on which seats are reserved without charge in addition to the basic fare, and these trains make scheduled stops in North Carolina only at the principal cities. These protestants contrast the equipment and service afforded by those trains with the less desirable equipment and service afforded by certain local trains of some of respondents in that State. They give examples of the crowding of coaches on the latter trains far beyond their seating capacities and of the operation of such coaches in an untidy condition. The equipment and service of the streamlined coach trains is also contrasted with the service on certain branch lines of one of respondents, which is provided in each instance by mixed trains of a number of freight cars and an antiquated combination passenger-and-baggage or passenger-and-mail or express car.

Passenger traffic on most of these branch lines is light. Crowded coaches are not peculiar to intrastate travel in North Carolina, but are common also in interstate travel in that and other States in southern territory, as well as in all other sections of the country. Passengers frequently litter the cars with paper and other refuse, and thereby contribute to the untidy condition

of the cars; and the crowded condition of the cars makes difficult and often impracticable the task of keeping them clean en route. Wartime travel by railroad has resulted in such a demand for passenger coaches that every available coach is being used, and upon their arrival at the terminals time and labor are not always sufficient to permit cleaning the coaches as thoroughly as

in normal times. Admittedly, interstate as well as intrastate passengers may and do travel on the local and mixed trains in North Carolina above described, and the accommodations and service furnished interstate passengers in such instances are the same as the accommodations and service furnished intrastate passengers.

The Price Administrator contends that the proposed increase in fares is inconsistent with the wartime stabilization program; further, that the record is inadequate to support a finding of unjust discrimination against interstate commerce, but that if we should find otherwise, the unjust discrimination should be removed by a reduction in the interstate fares to the level of the intrastate fares.

In *Increases in Texas Rates, Fares, and Charges*, 253 I.C.C. 723, and in the report on further hearing in *Increased Railway Rates, Fares, and Charges, supra*, we discussed contentions that rate increases therein proposed would be inconsistent with the efforts of the Government to avoid inflation and would conflict with the provisions of the Emergency Price Control Act of 1942, as amended by the Stabilization Act, and executive regulations thereunder. We concluded that the provisions of these acts, except those pertaining to the giving of notice and consent to intervene to the designated Federal agent, made no changes in or addi-

tions to the Interstate Commerce Act with respect to the rates, fares, and charges of common carriers by railroad. The provisions of these acts respecting the giving of notice and consent to intervene to the designated Federal agent have been complied with in each of these proceedings.

The evidence bearing upon the further contention of the Price Administrator has been received hereinbefore.

Tennessee.—The Tennessee Commission contends that the standards of transportation offered intrastate passengers in Tennessee do not conform, on the average, to those offered interstate passengers in that State, and that for this reason intrastate and interstate passengers in that State are not transported under substantially similar circumstances and conditions.

On each of the branch lines of respondent Nashville, Chattanooga & St. Louis, passenger service is provided by a mixed train consisting of a number of freight cars and a passenger coach, which is used also by some of the train crew in lieu of a caboose. The schedules on which such trains are operated are governed primarily by the amount of freight service to be performed. Six of these branch lines, comprising somewhat more than a third of the total mileage of this respondent in Tennessee, are wholly within the State. The coaches used on these lines are old and second grade in accommodations and maintenance. Passenger service on the main lines of this respondent, and of other respondents, is provided generally by scheduled passenger trains, including a number of modern streamlined all-coach trains or combination streamlined coach and pullman-car trains of generally first-grade accommodations and maintenance. Three streamlined all-coach trains are operated through Tennessee, each on alternate days, one over the lines of the Louisville & Nashville and Nashville, Chattanooga & St. Louis, another over the Illinois

Central, and a third over the Louisville & Nashville. These trains make regularly scheduled stops in Tennessee, other than at Nash-

*[Docket No. 28963—Sheet 19]

ville only to *take on passengers destined to certain points outside of the State or to discharge passengers coming from such points. The coaches of these trains are air conditioned, seats are reserved without charge in addition to the regular fare, and some of these trains carry lounge or observation cars which in normal times are available to coach passengers. One combination coach and pullman-car train also makes regularly scheduled stops at only two points in Tennessee, one of such stops being limited to passengers destined to or coming from points beyond the State. The other such train makes regularly scheduled stops at a number of points in Tennessee.

Respondent Nashville, Chattanooga & St. Louis operates 6 passenger trains daily over its main line in each direction between Nashville and Chattanooga. One of these is the streamlined all-coach train above mentioned. Of the remaining 5, one is a local train which stops at practically all intermediate points, and the other 4 are express trains which stop at a limited number of intermediate points and at some of them only on signal. The Nashville, Chattanooga & St. Louis and the Tennessee Central operate air-conditioned so-called chair or cafe coaches on certain of their trains between a number of points in Tennessee in which seats may be reserved at an extra charge in addition to the regular fares.

With the exception of the streamlined trains operated by certain of them, the equipment and service offered intrastate and interstate passengers in Tennessee by the other respondents and on other lines of the Nashville, Chattanooga & St. Louis in that State are not described of record.

Interstate as well as intrastate passengers may and do travel on the mixed trains above described, and the facilities and service furnished interstate passengers in such circumstances are the same as the facilities and service furnished intrastate passengers. The Nashville, Chattanooga & St. Lo: is also operates two interstate branch lines between certain points in Tennessee and certain points in Alabama, and passenger service on these lines is also provided by mixed trains.

The evidence contrasting the facilities and service available chiefly to interstate passengers on a limited number of modern streamlined air-conditioned coach trains with the facilities and service available to intrastate passengers on certain of the main lines of one of respondents is insufficient to establish that the standards of transportation afforded intrastate coach passengers in Tennessee, on an average, differ materially from those afforded interstate coach passengers in that State. At best it shows that some of the trains operated in that State are superior to others, a situation which obviously is not peculiar to Tennessee alone.

DISCUSSION AND FINDINGS

The transportation conditions bearing upon the reasonableness of the interstate fares have not changed materially since the adoption on April 6, 1943, of our report on further hearing in Ex Parte No. 148, wherein we declined to disturb our prior finding that the increased interstate fares then and now in effect were just and reasonable. Upon the records in the instant proceedings we can find no warrant for changing our views that a

basic coach fare of 2 cents per mile, plus an additional 10 *percent for the duration of the war, is reasonable for general application.

Such a fare is now in effect for one-way application generally throughout the country, except intrastate in the four States the fares in which are here before us. Also, the respective round-trip fares for application in coaches and in sleeping and parlor cars are uniform generally throughout southern territory, except intrastate in these four States on traffic in coaches and intrastate in Alabama and Tennessee on traffic in sleeping and parlor cars.

Both intrastate and interstate passengers travel side by side under substantially similar circumstances and conditions on practically every passenger car on every branch and main line operated by respondents in each of these four States. The evidence in each of these proceedings, therefore, contrary to the situation dealt with in *Wisconsin R.R. Comm.* v. *Chicago, B. & Q. R. Co.*, 257 U.S. 563, 580, establishes a condition which is state-wide, and is similar in every respect to that before us in *Rhode Island Commutation Fares*, 253 I.C.C. 383, and in *Increases in Texas Rates, Fares, and Charges, supra.*

The revenue lost to respondents in each of these States by reason of the lower intrastate fares is substantial, and the transportation conditions under which the intrastate service is performed do not differ materially from those under which the interstate service is performed. Section 13(4) of the act empowers us to increase intrastate rates or fares so that the intrastate traffic may produce its fair share of the earnings required by the respondent carriers to enable them to provide adequate and efficient railway transportation service, both interstate and intrastate. *United States* v. *Louisiana, supra*, page 75; *Florida* v. *United States*, 292 U.S. 1; *Illinois Commerce Comm.* v. *United States*, 292 U.S. 474. "The effect of maintaining a lower rate, intrastate, than the reasonable interstate rate is necessarily discriminatory wherever the two classes of traffic, inextricably intermingled, are carried * * * under substantially the same condi-

tions." *Illinois Commerce Comm.* v. *United States, supra,* page 485.

We find that—

1. The interstate one-way and round-trip coach fares now in effect to, from, and through points in Alabama, Kentucky, North Carolina, and Tennessee, and the interstate round-trip fares applicable in sleeping and parlor cars now in effect to, from, and through points in Alabama and Tennessee, are just and reasonable.

2. The intrastate one-way and round-trip coach fares in Alabama, Kentucky, North Carolina, and Tennessee, with certain exceptions hereinbefore referred to and not here in issue, and the intrastate round-trip fares applicable in sleeping and parlor cars in Alabama and Tennessee, are lower than the corresponding fares applicable interstate and intrastate generally throughout southern territory, except in the several states mentioned in this finding.

3. The conditions affecting the one-way and round-trip transportation of passengers in coaches within these four States, and the round-trip transportation of passengers in sleeping and parlor cars within Alabama and Tennessee, intrastate on the one hand, and interstate to, from, and through those respective States on the other, are substantially similar.

*[Docket No. 28963—Sheet 21]

*4. Interstate passengers in these States travel in the same trains generally in the same cars with intrastate passengers, but are forced to pay higher fares than the intrastate passengers for like services, to the undue and unreasonable advantage and pref-

erence of the intrastate passengers and the undue and unreasonable disadvantage and prejudice of the interstate passengers.

5. Respondent's revenues under the lower intrastate fares are less by at least $725,000 per annum in Alabama, $500,000 in Kentucky, $525,000 in North Carolina, and $525,000 in Tennessee than they would be if those fares were increased to the level of the corresponding interstate fares, and traffic moving under these lower intrastate fares is not contributing its fair share of the revenues required to enable respondents to render adequate and efficient transportation service.

6. The maintenance of intrastate one-way and round-trip coach fares in Alabama, Kentucky, North Carolina, and Tennessee, and of intrastate round-trip fares applicable in sleeping and parlor cars in Alabama and Tennessee, to the extent that such fares are on a lower level than the corresponding interstate fares, causes and will cause undue and unreasonable advantage to and preference of persons in intrastate commerce, undue and unreasonable disadvantage to and prejudice against persons in interstate commerce, and undue, unreasonable, and unjust discrimination against interstate commerce; and this unlawfulness should be removed by increasing the aforesaid intrastate fares in the respective States to the level of the corresponding interstate fares contemporaneously maintained by respondents to, from, and through such States; provided, that the aggregate charge made by any of respondents for the intrastate transportation in any of the States shall not exceed the aggregate charge made for like accommodations and for a like distance by the same respondent for interstate transportation to, from, or through such State.

The foregoing findings are without prejudice to the right of the authorities of the affected States, or of any interested party, to apply for modification thereof as to any specific intrastate fare on the ground that such fare is not related to interstate fares in

such a way as to contravene the provisions of the Interstate Commerce Act.

In accordance with our practice in such proceedings, we shall leave to respondents and the respective State Commissions the matter of adjusting the intrastate fares to conform to these findings. If this is not accomplished within 30 days from the service of this report, consideration will be given to the entry of an appropriate order.

SPLAWN, *Commissioner*, dissenting:

In my judgment the decision of the majority on the evidence in these proceedings goes beyond our lawful power under section 13(4). This view, I think, finds full support in several decisions by the Supreme Court of the United States in which the Court has had occasion to review some of our reports and orders under that section.

It should be emphasized that our authority under section 13(4) to require increases in intrastate rates springs from and is an incident of the duty to regulate and protect interstate commerce. In exercising that power to nullify State authority we should be guided by the following wise and well-settled principles

or standards which have been announced by the Supreme *Court: (1) That this Commission has no general authority to regulate intrastate rates; (2) that the provision of section 13(4) prohibiting unjust discrimination against interstate commerce is to be considered in connection with section 15a; (3) that whenever the Federal power is exerted within what would otherwise be the domain of State power, the justification of the exercise of the

Federal power must clearly appear; and (4) that the mere existence of a disparity between rates on intrastate and interstate traffic does not warrant us in prescribing intrastate rates. *Florida* v. *United States*, 282 U.S. 194, 211-212.

These proceedings present two questions. First, do the intrastate passenger fares imposed by authority of these States cause any undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce on the one hand and interstate commerce on the other hand? And second, do the intrastate fares cause any undue, unreasonable, or unjust discrimination against interstate commerce?

In considering the first question it is important to observe that the prohibition against undue prejudice and preference as between persons and localities in interstate and intrastate commerce in section 13(4) is substantially the same as the prohibition against undue prejudice and preference contained in section 3(1). The principal difference between the two provisions is that section 3(1) prohibits a *carrier* from giving an undue preference or causing an undue prejudice, while section 13(4) prohibits any intrastate *rate, fare*, etc. from causing the undue preference or undue prejudice. In view of the similarity of the language employed in the two provisions, we have said that evidence to sustain an order and finding that intrastate rates are violative of section 13(4) in that they unduly prejudice persons or localities must be of equal dignity and probative value as the evidence required to sustain a finding under section 3(1). *Barrett Co.* v. *Atchison, T. & S. F. Ry. Co.*, 172 I.C.C. 319, 334. The soundness of that rule is evident, for both provisions are directed against the same evils, namely, undue prejudice and undue preference as between localities and persons.

We have frequently found that the mere existence of a disparity in rates does not warrant a finding of undue prejudice

and preference under section 3(1), and that ordinarily the evidence to support such a finding must establish that such prejudice and preference constitute a source of undue disadvantage to one party and of undue advantage to another. To say that the evidence necessary to sustain a violation of the provision of section 13(4) as to undue prejudice and preference as between localities and persons, can be of less dignity or less probative value than the evidence necessary to show a violation of section 3(1) ignores completely the principle that whenever the Federal power is exerted within what would otherwise be the domain of State power, the justification of the exercise of the Federal power must clearly appear.

In support of their contention that the intrastate fares now maintained in these States cause undue prejudice and preference as between persons and localities, respondents rely upon (1) the similarity of the intrastate and interstate services, and (2) the differences in the fares.

*[Docket No. 28963—Sheet 23]

*The provision of section 13(4) which deals with prejudice and preference as between persons and localities, as previously noted, corresponds to section 3(1). Both of these provisions obviously are for the protection of persons and localities, and not primarily for the benefit of the carriers. The second provision of section 13(4), which is discussed later herein, provides a complete remedy for the carriers in situations where intrastate rates, fares, etc. unlawfully discriminate against interstate commerce.

With respect to the situations in Kentucky and Alabama, for example, no persons who pay the higher interstate fares and no localities are appearing herein to complain of undue prejudice and preference, or, without complaining, have testified that they

are in any wise injured, and so far as these records disclose, none has complained to respondents. Under these circumstances we would not even have before us a complaint under section 3(1), much less the evidence on which to base a finding of a violation of that section. Respondents do not ask relief for any particular persons or places, but seek state-wide orders.

In *Railroad Comm. of Wisconsin* v. *Chicago, B. & Q. R. Co.*, 257 U.S. 563, and *State of New York* v. *United States*, 257 U. S. 591, the Court held that orders entered by this Commission under section 13(4) requiring horizontal increases of intrastate passenger fares throughout the States of Wisconsin and New York, to correspond with fares for like interstate service in the same States, could not be sustained as orders to remove undue prejudice and preference as between persons and localities. In the *Wisconsin case*, at page 580, in referring to the "sweep" of our order the Court said:

> It includes fares between all interior points although neither may be near the border and the fares between them may not work a discrimination against interstate travelers at all. Nothing in the precedents cited justifies an order affecting all rates of a general description when it is clear that this would include many rates not within the proper class or the reason of the order. In such a case, the saving clause by which exceptions are permitted, can not give the order validity. As said by this court in the *Illinois Central R. R. case*, [245 U.S. 493]: "It is obvious that an order of a subordinate agency, such as the Commission, should not be given precedence over a state rate statute otherwise valid, unless, and except so far as, it conforms to a high standard of certainty." See also *American Express Co.* v. *Caldwell*, 243 U. S. 617, 627.

In this report it is stated that "The evidence in each of these

proceedings, therefore, contrary to the situation dealt with in [the *Wisconsin* case], establishes a condition which is state-wide." "Both intrastate and interstate passengers travel side by side under substantially similar circumstances and conditions on practically every passenger car on every branch and main line operated by respondents in each of these four States." Is it to be supposed that interstate passengers did not likewise ride on all trains to and from all branch and main-line points in Wisconsin? The cases are distinguishable, but in the following respect: In the *Wisconsin case* there was evidence that localities in Minnesota and Michigan in close proximity to localities in Wisconsin competed for the location of industries, and for retail trade, and to

*[Docket No. 28963—Sheet 24]

some extent for wholesale trade. *This competition was affected by the lower State fares. In these cases there is no evidence whatever of competition or injury. The Court found that there was evidence which would support a finding of undue prejudice and preference against a large class of fares. As above indicated, objection to the Commission's order was that it was not restricted to the border points to which the evidence pertained, but that it included fares between all interior points although they might not be near the border and the fares between them might not work a discrimination against interstate travelers at all. To assume that the court supposed that interstate passengers did not travel to and from the interior points, and to attempt to distinguish the cases upon that ground, is to miss the real point of distinction, which is that in the *Wisconsin case* there was evidence going beyond a mere showing of a difference in rates for similar services, and which tended to show injury to interstate localities, while the records herein are devoid of evidence of injury. If the order of the Commission there could not be sustained as an order to remove undue prejudice and preference as

between persons and localities, what can be said in support of that phase of the state-wide orders herein which are unsupported by evidence beyond the mere difference in fares?

Turning now to the second question: Do the intrastate fares cause undue or unjust discrimination against interstate commerce? Here, respondents rely upon the loss of revenues which they contend has resulted from refusal of the State rate authorities to permit the intrastate fares to be increased to the interstate level. In Kentucky, for example, the estimated annual loss of revenue to all of the principal respondents in that State approximates $526,000.

Section 15a, which is intended, among other things, to insure a fair return for carriers provides that in the exercise of our power to prescribe just and reasonable rates we shall give due consideration, among other factors, to the need, in the public interest, of adequate and efficient railway transportation service at the lowest cost consistent with the furnishing of such service, and to the need of revenues sufficient to enable the carriers, under honest, economical, and efficient management to provide such service. In the *Wisconsin case*, at page 586, the Court referred to the "dovetail relation" between the provision of section 13(4) relating to unjust discrimination against interstate commerce and the purpose of section 15a, as it then stood, and pointed out that if that purpose is *interfered with* by a disparity of intrastate rates we are authorized to end the disparity by directly removing it. Continuing, at page 590 the Court stated that action by the Commission in this regard should be directed to substantial disparity which operates as a real discrimination against, and obstruction to, interstate commerce. It should be noted that at the time of the decision in the *Wisconsin case*, section 15a did not read the same as at present, but its general purpose was to secure to the carriers revenue sufficient to enable

them to provide in the public interest adequate and efficient transportation service, the same as under the present provisions.

That something more than a disparity between interstate and intrastate rates is necessary to support a finding of undue discrimination against interstate commerce is made quite plain in *United States* v. *Louisiana*, 290 U.S. 70, 74, 75, wherein the Court stated:

***[Docket No. 28963—Sheet 25]**

> *By section 416 of the Transportation Act, section 13(4) Interstate Commerce Act, directly involved here, the Commission was given power to remove unjust discrimination by intrastate rates against interstate commerce, by prescribing minimum intrastate rates. This Court has consistently held that this section is to be construed in the light of section 15a(2) and as supplementing it, so that the forbidden discrimination against interstate commerce by intrastate rates includes those cases in which disparity of the latter rates operates to thwart the broad purpose of section 15a to maintain an efficient transportation system by enabling the carriers to earn a fair return. So construed, section 13(4) confers on the Commission the power to raise intrastate rates so that the intrastate traffic may produce its fair share of the earnings required to meet maintenance and operating costs and to yield a fair return on the value of property devoted to the transportation service, both interstate and intrastate. *Wisconsin Railroad Comm'n.* v. *C., B. & Q. R. Co., supra*, 586, 587, 588, 589, 590; *New York* v. *United States*, 257 U.S. 591, 601; *Florida* v. *United States, supra*, 211; *Louisiana* v. *United States*, 284 U.S. 125, 131; see *Nashville, C. & St. L. Ry. Co.* v. *Tennessee*, 262 U.S. 318.

In my judgment the evidence in these proceedings falls

far short of establishing that the failure of respondents to receive the additional revenue, which would result from increasing the present intrastate fares to the interstate level, operates to *interfere with* or to *thwart* the broad purpose of section 15a to maintain an efficient transportation system. Nor can it be said that under present conditions the failure of the State Commissions to permit increases in the present intrastate fares constitutes an obstruction to interstate commerce.

In the Kentucky proceeding, for example, the relation of net railway operating income to investment in railway property including cash, materials, and supplies, for the seven principal respondents shows average rates of return, after deduction of Federal income taxes, as follows: 1938, 2.98 percent; 1939, 3.76 percent; 1940, 3.95 percent; 1941, 5.41 percent; 1942, 5.78 percent. In this connection it is of interest that based on 1940 valuations recommended by our Bureau of Valuation the average rates of return for the respective years indicated would be 4.18 percent, 5.31 percent, 5.57 percent, 7.81 percent, 8.50 percent, and 8.15 percent. The increase in net railway operating income for passenger traffic alone, 1942 over 1941, was $50,992,801 for the 12 class I respondents in the Alabama proceeding, and $29,506,275 for the 7 principal respondents in the Kentucky proceeding.

I wish to emphasize my disagreement with finding 5 in this report that traffic moving under these lower intrastate fares is not contributing its fair share of the revenue *required* to enable respondents to render adequate and efficient transportation service. There is nothing in the report or the evidence to indicate that the revenues from the present passenger fares are less than those required to enable respondents to render adequate and efficient transportation service, or that there is any deficiency in respondents' revenues from their passenger and freight traffic

considered as a whole. As a matter of fact it does not affirmatively appear on this record that fares based on the lower intra-

*[Docket 28963—Sheet No. 26]

state level applied to both interstate *and intrastate traffic would be less than required to enable respondents to render the character of service contemplated by section 15a.

In each of these four States the State regulatory authority, after due consideration, authorized an increase of 10 percent on the going intrastate fares and declined to order or authorize a further increase to the interstate level. The fact that some of the adjoining States have permitted increases in intrastate fares to the interstate level is not binding upon the duly constituted authorities of these four States. The evidence in these proceedings does not sustain the contention that the maximum fares for interstate travel must also be the minimum fares for intrastate travel.

I am authorized to say that COMMISSIONERS AITCHISON and MAHAFFIE join in this expression.

By the Commission.

(SEAL) W. P. BARTEL, Secretary.

EXHIBIT C

ORDER

At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D. C., on the 8th day of May, A.D. 1944.

No. 28963

ALABAMA INTRASTATE FARES.

No. 29000

KENTUCKY INTRASTATE FARES

No. 29036

NORTH CAROLINA INTRASTATE COACH FARES

No. 29037

TENNESSEE INTRASTATE FARES

Upon consideration of petitions (1) of the Alabama Public Service Commission et al. in No. 28963 for reconsideration, rehearing and further order; (2) of the Commonwealth of Kentucky and Railroad Commission of Kentucky in No. 29000 for reargument and reconsideration; (3) of the North Carolina Utilities Commission et al. in No. 29036 for reconsideration, reargument, further hearing, etc.; (4) of the Railroad and Public Utilities Commission of the State of Tennessee in No. 29037 for reconsideration; and (5) of the Price Administrator in each of the above-entitled proceedings for reconsideration; together with respondent's reply to the foregoing petitions; and upon further consideration of the record in these proceedings:

It is ordered, That the aforesaid petitions be, and they are hereby, denied.

By the Commission.

W. P. BARTEL, Secretary.

(SEAL)

EXHIBIT D

BEFORE THE RAILROAD AND PUBLIC UTILITIES COMMISSION OF THE STATE OF TENNESSEE

Nashville

I. & S. Docket No. 2535.

Re: Increased Passenger Fares, 1942.

Appearances:

C. P. Reynolds, All Respondents.
W. C. Burger, Louisville & Nashville Railroad.
H. B. Schneiber, Office Price Administrator.
J. F. Gaffney, Jr., Nashville, Chattanooga and St. Louis Ry.
C. S. Blackman, Tennessee Central Railway.
E. J. Meade, Illinois Central Railroad.
E. S. Clements, Southern Railway.

During Nov. 1942, all Tennessee carriers by rail filed new and advanced passenger fare rates applicable to intrastate passenger traffic in Tennessee. The new and proposed passenger fare rates as compared with the present passenger fare rates are as follows:

Types of Passenger Service	In Cents Per Mile Traveled Present Basic Fare	Present Fare Including 10% Ex Parte Rate 148	Proposed Fare
In Coaches			
One Way	1.50	1.65	2.20
15 Day Limit	1.35	1.485	1.98
In Parlor or Sleeping Cars			
30 Day Limit Round Trip	2.25	2.475	2.75
3 Months Limit Round Trip	2.50	2.75	2.75
6 Months Limit Round Trip	2.50	2.75	3.30

These new and advanced passenger fare rates were suspended by the Commission in its order entered November 25, 1942, and this Commission upon its own motion, without formal pleading entered upon a hearing concerning the lawfulness of the advanced passenger fare rates and to prescribe just and reasonable passenger fare rates for future application.

A full and complete hearing was held before the Commission on May 13, 1943.

In answering a question of the Chairman, Counsel for respondents replied as follows:

> "MR. REYNOLDS: . . . I may say that it is not our purpose to introduce a lot of witnesses and figures to show what would be a reasonable rate.
>
> "What we propose to do, very briefly, is to give the history of the present rate, of 1.65 cents per mile, and show the Commission that it is a depressed rate, which was put in to meet bus competition primarily; and then to show the Commission also that the rate we propose, the rate of 2.2 cents per mile has been approved by the Interstate Commerce Commission for application all over the country, including points in the south, and that it has also been approved by several of the southern Commissions for intrastate applications in the southern states, and also we wish to show that 2.2 cents a mile is much less than the fare in effect during the last World War, and in fact that it is much less than the fare prior to 1933, and that will be done by Mr. Gaffney in his testimony.

"In view of the fact that the Commission in Docket 2650, the so-called general passenger fare investigation, approved a basic fare of 2 cents as reasonable for allocation throughout the entire United States, and in view of the further fact that they included the 10 percent increase in this fare in Ex Parte 148, when it was first heard, and declined to remove it when the case was further heard, we have not felt it necessary to go into any great detail in this hearing as to the reasonableness of the rate."

It was therefore apparent that respondent carriers were depending more upon uniformity than upon the reasonableness of the rates per se, to prove the lawfulness of the new and increased passenger fare rates in Tennessee.

The so-called streamline trains were referred to as the major improvement in passenger transportation yet offered the public and that every convenience and luxury has been installed in these trains such as de luxe coaches, air conditioning, excellent dining cars where delicious meals were served at low prices, all of which is true, but, these trains are primarily for interstate travellers, and in some instances their stops are so arranged that intrastate passengers in Tennessee are not allowed the privilege of riding said streamlined trains. However, the request for increased rates on account of such additional services performed by the carriers should be accompanied by a showing of increased cost and the necessity for greater revenue to maintain their services.

Respondents offered much testimony showing how expenses of a typical Tennessee railway (N. C. & St. L. Ry.), had increased since 1941. The following table of "Ratios Expenses to Revenue" proves conclusively that revenues show a much greater increase than expenses.

Ratio Expenses to Revenue.

	1941	1942	4 mo. 1943
C. N. O. & T. P. Ry.	57.8	53.1	50.9
Southern Ry.	63.3	55.6	52.7
L. & N. RR.	65.3	58.7	55.0
I. C. RR.	72.7	68.2	65.0
G. M. & O. RR.	68.2	62.3	58.3
Tenn. Central Ry.	74.4	74.7	71.6
Clinchfield	41.6	41.9	44.1
N. C. & St. L. Ry.	71.8	63.6	60.5

In 1941 it cost the Nashville, Chattanooga and St. Louis Railway 71.8 cents to earn a dollar, while for the first 4 months of 1943 it cost that carrier only 60.5 cents to earn a dollar. Considering the increased volume of traffic and the lower transportation cost per dollar of revenue, the gain in Net Railway Operating Income is phenomenal, as demonstrated below:

N. C. & St. L. Ry. Net Operating Income.

1941	$3,309,419
4 mo. 1943	2,319,371

Much statistical information purporting to show that passenger business of respondent lines was handled at a loss was presented. The information would have carried much weight had it allowed credit for both passenger and allied services. As it was, every passenger train expense was considered but only passenger fares, and no allied service, was credited. However, the following table which does not include allied service shows that any deficit which was more than eliminated in 1942, was for the first 4 months in 1943 turned into a net which contributed its share to the revenues of the southern district carriers as a whole enabling them to earn a return of more than 7 per cent upon their property investment.

Passenger Revenues.

Road	1941	1942	4 months 1943
C. N. O. & T. P. Ry.	$ 1,859,009.	$ 4,206,668.	$ 2,098,589.
Southern Ry.	14,232,779.	36,265,338.	16,657,904.
L. & N. RR.	8,976,429.	23,288,244.	14,239,382.
I. C. RR.	11,491,056.	19,941,145.	9,476,901.
G. M. & O. RR.	619,770.	1,361,108.	811,790.
Tenn. Central Ry.	55,939.	187,386.	155,758.
Clinchfield RR.	58,032.	87,422.	48,877.
N. C. & St. L. Ry	1,706,194.	4,654,317.	2,408,897.
Totals	$ 8,999,208.	$89,991,628.	$45,898,093

Page 3, of Exhibit No. 3, indicated that for the N. C. & St. L. Railway, passenger revenue must be increased 40 per cent over 1941 passenger revenue in order to wipe out a net railway operating deficit from passenger operations. 1942 passenger revenue was increased over 1941 passenger revenue 172.79 per cent. Using the first four months of 1943 as a guide passenger revenue for 1943 would exceed 1941 by 323.56 per cent. Add to these increases the revenues derived from allied services and it will be made apparent that a typical Tennessee line, as selected by respondents that is the N. C. & St. L. Railway, is not in need of additional passenger revenue.

Information requested by the Commission which was furnished by the respondents subsequent to the hearing, indicates that by including allied service revenue, as well as passenger revenue, the net Railway Operating deficit-passenger for 1941 was $675,092, while for 1942 it had a net of $709,082, or an increase of $1,384,174 in net Railway Operating Income-passenger.

WE ARE THEREFORE OF THE OPINION AND FIND, That the advanced rates suspended by the Commission in its order in this cause, entered November 25, 1942, were not proven to be just, reasonable or non-compensatory.

IT IS THEREFORE ORDERED, That said respondents be and they are hereby notified and required to cancel the suspended rates leaving in full force and effect those rates in effect immediately prior to the date of suspension, namely:

Types of Passenger Service	In Cents Per Mile Traveled
In Coaches	
One way	1.65
15 day limit	1.485
In Parlor or Sleeping Cars	
30 day limit round trip	2.475
3 months limit round trip	2.75
6 months limit round trip	2.75

WE FIND these fares to be just, reasonable and compensatory, and,

IT IS FURTHER ORDERED, That the fares herein approved shall remain in effect until 6 months after the termination of the present war, unless sooner modified by appropriate order of this Commission, and,

IT IS FURTHER ORDERED, That 6 months after the termination of the present war increases permitted in this Commission's order entered May 12, 1942 will expire, and

IT IS FURTHER ORDERED, That jurisdiction of this proceeding should be and it is hereby retained for the purpose

of entering such order or orders as the Commission may find to be just, reasonable and proper.

PORTER DUNLAP, Chairman;
LEON JOUROLMON, JR., Commissioner;
JOHN C. HAMMER, Commissioner.

Nashville, Tenn., Aug. 30, 1943.

EXHIBIT E

*[1]

*BEFORE THE INTERSTATE COMMERCE COMMISSION

TENNESSEE INTRASTATE FARES

Docket No. 29037

Andrew Jackson Hotel,
Nashville, Tennessee,
Thursday, December 2, 1943.

Met, pursuant to notice, at 9:30 o'clock, a. m.

BEFORE:

J. P. McGRATH, Examiner.

APPEARANCES:

FRANK W. GWATHMEY, Shoreham Building, Washington, D. C., appearing for all Tennessee railroads.

CHARLES CLARK, 15 & K Streets, Washington, D. C., appearing for the Southern Railway Company and System Lines.

J. F. GAFFNEY, Nashville, Tennessee, appearing for the N. C. & St. L. Railway.

A. W. STOCKELL, Nashville Trust Building, Nashville, Tennessee, appearing for the L. & N. Railroad Company.

JAMES B. GRAY, 135 East Eleventh Place, Chicago, Illinois, appearing for the Illinois Central System.

M. B. DUGGAN, Room 8, Terminal Station, Atlanta, Georgia, Agent for all Tennessee carriers.

LEON JOUROLMON, JR., 123 Memorial Building, Nashville, Tennessee, appearing for the Railroad and Public Utilities

*[2]

*Commission of Tennessee.

J. O. HENDLEY, Memorial Building, Nashville, Tennessee,

appearing for the Railroad and Public Utilities Commission of Tennessee.

M. D. MILLER, Room 5319, Federal Office Building No. 1, 2nd and D Streets, S. W., Washington 25, D. C., appearing for Office of Price Administration and the Economic Stabilization Director.

*INDEX OF WITNESSES

Witness	*Direct*	*Cross*	*Redirect*	*Recross*
Gaffney, Jr., J. F.	6	47	180	180
	157	158		
Jameson, P. L.	65	70		
Tassin, J. S.	86	130		
	188	189		
Hopkins, J.	131	131		
	227	230		
	334			
Kennedy, W. F.	135			
Peer, H. A.	142			
	155			
Sharpe, J. L.	147			
Aiken, E. N.	191	205	219	221
Coke, J. H.	230	242	243	244
Hendley, J. O.	249	280	312	
Jourolmon, Jr., Leon	317	318		
Whitnack, Mrs. D. S.	319	330	332	

INFORMATION TO BE FURNISHED

Amount interstate revenue accrued in Tennessee for periods mentioned (10 days) by Mr. Kennedy Page, 140.

INDEX OF EXHIBITS

Number	*Witness*	*For Identification*	*In Evidence*
1	Gaffney	8	46
2	Gaffney	23	46
3	Gaffney	29	46
4-5	Gaffney	33	46
6	Tassin	87	114
7	Aiken	192	205
8	Aiken	194	205
9	Coke	232	248
10	Coke	244	248
11	Hendley	251	317
12-16	Whitnack	350	330

BRIEFS

Due ..... January 4, 1944

*[4]

*PROCEEDINGS

EXAMINER McGRATH: The Interstate Commerce Commission has assigned for hearing at this time and place Docket No. 29037, entitled "Tennessee Intrastate Fares." Who appears for Respondents?

MR. GWATHMEY: Frank W. Gwathmey, Shoreham Building, Washington, D. C., appearing generally on behalf of all railroads operating in Tennessee.

MR. CLARK: Charles Clark, Washington, D. C., 15th and K Streets, for Southern Railway System Lines, in addition, of course, to Mr. Gwathmey's announcement.

MR. STOCKELL: A. W. Stockell, of Nashville, Tennessee, Nashville Trust Building, appearing for the L. & N. Railroad.

MR. GRAY: James B. Gray, 135 East Eleventh Place, Chicago 5, Illinois, appearing for the Illinois Central System. I am a registered practitioner.

EXAMINER McGRATH: I take it you are a registered practitioner, too, are you, sir?

MR. STOCKELL: Yes, sir.

MR. DUGGAN: M. B. Duggan, Room 8, Terminal Station, Atlanta, Georgia, Agent for the Tennessee carriers, all Tennessee carriers.

EXAMINER McGRATH: Have you been admitted to practice?

MR. DUGGAN: No.

EXAMINER McGRATH: Are you representing more than

*[5]

one *carrier?

MR. DUGGAN: All of the Tennessee carriers.

EXAMINER McGRATH: In what capacity?

MR. DUGGAN: I am the publishing agent.

MR. GWATHMEY: Mr. Duggan is chairman of the Southern Passenger Association and is agent on behalf of all the railroads operating in Tennessee. He also signed the petition in this case. He is merely appearing here without intending to take an

active part in the proceedings, in order to let it be known that he is here, representing all of the Tennessee railroads.

EXAMINER McGRATH: You are representing those railroads as counsel, are you not?

MR. GWATHMEY: Yes, sir.

MR. DUGGAN: I am only the publishing agent.

EXAMINER McGRATH: Who appears for the Tennessee Commission?

MR. JOUROLMON: Leon Jourolmon, Jr., 123 War Memorial Building, Nashville, Tennessee, and Mr. J. O. Hendley, 110 War Memorial Building, Nashville, Tennessee.

EXAMINER McGRATH: Are there any other appearances?

MR. MILLER: Yes, Mr. Examiner, M. B. Miller, Room 5319 Federal Office Building No. 1, Washington 25, D. C., appearing on behalf of the Price Administrator and the Economic Stabilization Director. I am a registered practitioner.

EXAMINER McGRATH: Are there any further appearances?

*[6]

*(No response).

EXAMINER McGRATH: This is an investigation instituted by the Commission in response to a petition filed by common carriers by railroad operating in Tennessee, alleging violation of Section 13(4), of the Interstate Commerce Act, to determine whether the refusal of the Railroad and Public Utilities Commission of Tennessee to authorize or permit the application for the transportation of passengers traveling intrastate in Tennessee of fares and charges corresponding to those established for interstate application on October 1, 1942, causes any undue or unreasonable advantage, preference or prejudice as between persons or localities in intrastate commerce on the one hand and interstate or foreign commerce on the other, or any undue, unreasonable or unjust discrimination against interstate or foreign commerce; and to determine what fares and charges, if any, or what maximum or minimum or maximum and minimum fares and charges

shall be prescribed to remove such unlawful advantage, preference, prejudice or discrimination, if any, as may be found to exist.

Respondents may proceed.

MR. GWATHMEY: I will call Mr. Gaffney.

JOHN F. GAFFNEY, JR.

was sworn and testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Gwathmey) Please give your name and state your

*[7]

*residence and official railroad position.

A. John F. Gaffney, Jr., Nashville, Tennessee, General Passenger Agent, The Nashville, Chattanooga & St. Louis Railway.

Q. State how long you have held your present position and, very briefly, your previous experience in passenger traffic matters.

A. I have been General Passenger Agent since August 15, 1930. My service with the Passenger Traffic Department of The Nashville, Chattanooga & St. Louis Railway dates from August 1, 1902.

Q. On whose behalf are you testifying in this proceeding?

A. The Nashville, Chattanooga & St. Louis Railway was designated to act as Chairman of the Railroad Committee in presenting this case and I am speaking for all of the railroads operating within the State of Tennessee, to which, the Tennessee Public Utilities Commission has denied authority to put their intrastate passenger fares on the interstate basis in accordance with passenger tariffs filed with it to become effective December 1, 1942.

Q. Before proceeding with your testimony I think it would be well to place before the Examiner a map showing the railroad lines in Tennessee. You have, I believe, such a map which you wish to offer as an exhibit.

A. Yes.

MR. GWATHMEY: Mr. Examiner, I would like to have

*[8]

this *marked for identification Exhibit No. 1 of Mr. Gaffney.

EXAMINER McGRATH: Very well.

(Exhibit 1, witness Gaffney, marked for identification).

MR. MILLER: Mr. Examiner, there is prepared testimony being used in this case. I believe the Commission's rules provide that copies shall be distributed to the parties.

EXAMINER McGRATH: Have you extra copies?

THE WITNESS: Yes, I have.

MR. GWATHMEY: Give Mr. Miller and Mr. Jourolmon copies. There have been some minor changes made.

Q. (By Mr. Gwathmey) Now, Mr. Gaffney, this map as I understand shows primarily the lines of the Nashville, Chattanooga & St. Louis Railway, is that correct?

A. That is correct.

Q. Does it also show the location of the lines of other railroads operating in Tennessee?

A. It does, sir.

Q. What railroad or railroads operate the largest amount of mileage in the State of Tennessee?

A. The N. C. & St. L. Railway and the Southern Railway. They are very close, the N. C. & St. L. mileage being around 800 miles and the Southern, I am pretty sure, is close to that in the State of Tennessee.

Q. Do such roads as the L. & N., the Illinois Central, Tennessee Central, Gulf, Mobile & Ohio and others also operate in this

[9]

state?

A. They do, sir.

MR. GWATHMEY: Mr. Examiner, the petition of the railroads for this investigation, dated September 8, 1943, contains a list of all railroads operating in Tennessee. If desired, I will be glad to read them into the record, but I suppose that is hardly necessary.

EXAMINER McGRATH: Is it agreeable to the other side that the petition be made a part of the record by reference?

MR. JOUROLMON: I would like very much to have it done.

EXAMINER McGRATH: It will be so considered then.

MR. GWATHMEY: Then I will not read the names of all the railroads at this time.

MR. HENDLEY: If that petition is made a part of the record, which I am very glad that it is, will the reply of the Tennessee Commission to that petition also be made a part of the record?

EXAMINER McGRATH: If you wish to make that offer when it comes your time, I think that will be satisfactory, probably.

MR. HENDLEY: It won't be so made unless I do make the offer?

MR. GWATHMEY: We have no objection to an understanding that this petition as well as the reply of the Tennessee Commission will be made a part of the record, by reference as pleading, but as not proof of the facts set out in there, in either document.

[10]

EXAMINER McGRATH: Yes. As the Examiner understands the purpose of the offer made here, and the acceptance of the petition, it is merely to give us the names of the railroads operating in Tennessee, that is the only purpose is it not?

MR. GWATHMEY: Yes, sir.

Q. (By Mr. Gwathmey) Mr. Gaffney, I understand from this map that the lines of the Nashville, Chattanooga & St. Louis Railway extend very generally throughout the State of Tennessee, is that correct?

A. That is correct, sir.

Q. And I also note that the main line of the company passing east-west through Nashville and thence to Chattanooga, and thence on to Atlanta passes over the state line into Alabama for a short distance west of Chattanooga?

A. That is correct.

Q. Is that right?

A. Also Georgia.

Q: And it also passes back into Tennessee and for a short distance into Georgia?

A. That is correct.

Q. Then back into Tennessee?

A. That is right.

Q. Please give in chronological order a brief statement of the

*[11]

one-way interstate and intrastate basic passenger fares *applicable in Southern Passenger Association territory from April 1, 1908, to date.

A. Generally speaking, the authorized bases of one-way passenger fares in Southern Passenger Association territory, i. e., territory south of the Potomac and Ohio and east of the Mississippi Rivers, including the gateways, for this period were as follows:

From April 1, 1908, to June 9, 1918, inclusive, 2.5 cents per mile, in all classes of equipment.

From June 10, 1918, to August 25, 1920, inclusive, under order of the Director General of Railroads, 3 cents per mile, in all classes of equipment. For the period June 10, 1918, to November 30, 1918, an additional charge of 16 2-3 per cent of the one-way fare was assessed for travel in sleeping and parlor cars.

From August 26, 1920, to November 30, 1933, inclusive, 3.6 cents per mile, in all classes of equipment, plus a surcharge for passengers traveling in sleeping or parlor cars of 50 per cent of the charge for space occupied in such cars.

I might divert here a little and point out parenthetically that during the years 1932 and 1933 certain of the southern carriers decided as an experimental proposition to establish lower fares in an attempt to attract additional travel to the railroads in competition with other forms of transportation, particularly with private automobile and buses. For example, from April 1, 1933,

*[12]

to November 30, 1933, inclusive, the Mobile and *Ohio Railroad (now Gulf, Mobile and Ohio Railroad), Louisville and Nashville Railroad and Nashville, Chattanooga & St. Louis Railway

had in effect experimental one-way fares on basis of 3 cents per mile in sleeping or parlor cars without surcharge and 2 cents per mile in coaches. During the same period, The Nashville, Chattanooga & St. Louis Railway was experimenting between stations on its line west of Nashville (intrastate in Tennessee) with fares based on 1.5 cents per mile in coaches.

From December 1, 1933, to November 14, 1937, inclusive, 3 cents per mile in sleeping or parlor cars and 1.5 cents per mile in coaches, except that the coach fare on certain roads such as the Illinois Central System, Mobile & Ohio Railroad (now Gulf, Mobile and Ohio Railroad) and St. Louis-San Francisco Railway was kept at 2 cents per mile, these latter roads meeting the 1.5 cents per mile competition between certain points.

From November 15, 1937, to January 14, 1939, 3 cents per mile in sleeping or parlor cars and 2 cents per mile in coaches.

From January 15, 1939, to February 9, 1942, inclusive, 3 cents per mile in sleeping or parlor cars and 1.5 cents per mile in coaches, except on certain lines such as the Gulf, Mobile and Ohio Railroad, Illinois Central System, St. Louis-San Francisco

*[13]

Railway coach fare was 2 cents per mile, compe *tition being met between certain points.

From February 10, 1942, to September 30, 1942, 3.3 cents per mile in sleeping or parlor cars and 1.65 cents per mile in coaches, except on lines of the Gulf, Mobile and Ohio Railroad, Illinois Central System, and St. Louis-San Francisco Railway fare was 2.2 cents per mile, meeting competition between certain points.

A comparison of the authorized basic coach fares in effect for the several periods mentioned with the coach fare being sought in these proceedings, i. e., 2.2 cents per mile, which is the same coach fare currently in effect for interstate traffic, shows:

For the period April 1, 1908, to June 9, 1918, the fares were approximately 13½ per cent higher.

For the period June 10, 1918, to August 25, 1920, the fares were approximately 36 per cent higher.

For the period August 26, 1920, to November 30, 1933, the fares were approximately 63½ per cent higher.

Q. When and under what circumstances was the 2.2 cent coach fare made applicable for interstate transportation generally throughout the south?

A. On July 14, 1942, substantially all railroads operating in Southern Passenger Association Territory (except those roads which were maintaining at the time a coach fare of 2.2 cents

*[14]

per mile) filed a petition with the Interstate Commerce Commission for authority to place their one-way coach fares on the same basis as in effect generally throughout the United States. When this petition was filed the great majority of the southern roads had in effect a coach fare on the basis of 1.65 cents per mile. However, certain roads, for example, the Gulf, Mobile and Ohio Railroad, Illinois Central System and St. Louis-San Francisco Railway had in effect at that time coach fares on the basis of 2.2 cents per mile, this being the same basis generally in effect throughout the rest of the United States.

The authority sought was granted by the Interstate Commerce Commission in its order dated August 1, 1942, modifying the original order in Ex Parts 148, Increased Railway Rates, Fares and Charges, 1942, 248, I. C. C. 545, and the basis of coach fares authorized thereunder, i.e., 2.2 cents per mile for interstate traffic, was made effective on October 1, 1942.

Q. And is it now in effect?

A. Yes, sir.

When the petition to which you refer was filed with the Interstate Commerce Commission, was there any protest filed with the Commission in connection with the proposed increase?

A. No. However, after the Interstate Commerce Commission had entered its order of August 1, 1942, approving the increase and after tariffs had been filed as authorized by the Interstate

*[15]
Commerce Commission, Mr. Leon Henderson, then Price Administrator, filed a written protest and request for suspension. The Interstate Commerce Commission refused to suspend the tariffs and they became effective, as previously stated, on October 1, 1942.

Q. What one-way coach fare is now being charged by the Tennessee Railroads for intrastate transportation in Tennessee?

A. The basis of one-way coach fares generally maintained by the Tennessee carriers is 1.65 cents per mile. However, certain of the Tennessee carriers, i. e., Gulf, Mobile and Ohio Railroad, Illinois Central System, and St. Louis-San Francisco Railway, now have in effect a coach fare of 2.2 cents per mile except in such instances where they meet competition of the lines maintaining 1.65 cents per mile fare.

EXAMINER McGRATH: Is that fare in effect intrastate?

MR. GWATHMEY: Yes, sir.

EXAMINER McGRATH: Over the Illinois Central 2.2?

THE WITNESS: 2.2 except where they meet competition, Mr. Examiner, of the other lines.

Q. (By Mr. Gwathmey) In other words, Mr. Gaffney, I understand from your statement that the Tennessee Railroad and Utilities Commission has refused to permit certain of the railroads operating in the state to put their fare on the 2.2 cent basis intrastate, notwithstanding the fact that some of the railroads operating in the same state already have their fares on that basis?

A. That is correct, sir.

Q. Is that right?

*[16]

*A. That is correct, sir.

Q. And that is the situation today?

A. That is right.

Q. Subsequent to the establishment of the interestate coach fare of 2.2 cents per mile to and from points in Tennessee, did the

Tennessee lines undertake to establish the same basis of fares intrastate in Tennessee?

A. Yes.

Q. Explain what steps were taken and the results of the efforts of the Tennessee lines in this direction.

A. As previously shown, tariffs and supplements reflecting the establishment of 2.2 cents per mile, were filed with the Tennessee Public Utilities Commission to become effective December 1, 1942. These tariffs and supplements were suspended by order of the Tennessee Public Utilities Commission in its order entered November 25, 1942. A hearing was held before the Commission on May 13, 1943, and a decision rendered August 30, 1943, denying the proposal of the carriers to make the fares proposed effective in the State of Tennessee.

Q. Does that mean that almost exactly an entire year has now elapsed since the railroads undertook to make this increase in fares effective in Tennessee?

A. Yes, sir, in other words from May until August.

*[17]

*Q. What?

A. From May until August. The hearing was held—

Q. You didn't understand my question.

EXAMINER McGRATH: Read the question.

(The question was read.)

A. That is correct, it was almost a year.

Q. (By Mr. Gwathmey) In other words, your tariffs were published to become effective on December 1, 1942?

A. 1942.

Q. Now, after the Tennessee Commission had suspended the tariffs how much time elapsed before the railroads were able to obtain a hearing before the Tennessee Commission?

A. May, 1943, under date of May 13, 1943.

Q. In other words, there was a period of nearly six months, wasn't it?

A. Practically six months.

Q. After the hearing had been held, how long was it before the railroads got a decision from the Tennessee Commission?

A. August 30, 1948.

Q. About three and a half months?

A. Yes, sir.

Q. So that during all this time the railroads have been denied the revenue which they would have received had this increase been made effective as proposed?

A. That is correct.

*[18]

*Q. Is that right?

A. That is correct, sir.

Q. Have the railroads in the south, including the Tennessee lines, sought within recent months to put their intrastate passenger fares in other states on the interstate basis?

A. Yes.

Q. State what action has been taken by the various state commissions in the proceedings involving the proposed increases in passenger fares.

A. Petitions were filed with the Commissions in those states, the laws of which require that the authority of the State Commission be first obtained. In other states, in which no such requirement exists, tariffs designed to make effective the coach fare of 2.2 cents per mile were duly filed with the State Commissions.

The State Commissions of Florida, Louisiana, Mississippi, South Carolina, Virginia and Georgia have already approved the proposed fares.

Q. Are the increased fares in coaches now in effect in each of those other states intrastate?

A. Yes, if they have had time to get their tariffs in effect, because the Commission has approved of them in all the states I mentioned, and I presume those tariffs are in effect, if they have had time to get the tariffs in effect.

Q. Go ahead with your answer.

*[19]

*A. The Railroad Commission of Kentucky denied the increase

in coach fares, but permitted the Kentucky lines to put into effect the round-trip fares good for transportation in sleeping or parlor cars. Hearings have been held in the States of Alabama, North Carolina and Tennessee. The regulatory Commissions in these three states have denied the increase.

Q. Have 13th Section proceedings already been instituted in respect to the fares in Alabama and Kentucky, as well as in Tennessee?

A. Yes, sir.

Q. What is the status of the proceedings in Alabama and Kentucky, have they already been heard?

A. Yes, sir, they have.

Q. And are they now pending before the Interstate Commerce Commission?

A. They are pending before the Interstate Commerce Commission.

Q. Do all of the Tennessee lines maintain a one-way coach fare of 2.2 cents per mile for interstate transportation to and from points in Tennessee?

A. Yes.

Q. Is this fare of 2.2 cents per mile now in effect for interstate transportation throughout the south and generally throughout the remainder of the United States?

A. Yes, with a possibility of a few exceptions on lines operating west of the Mississippi River.

*[20]

*Q. Please explain how it happened that prior to October 1, 1942, some, but not all, of the southern railroads had in effect a coach fare of only 1.65 cents per mile, whereas, the fare generally applicable in other parts of the country was 2.2 cents per mile.

A. In Docket 26550, Passenger Fares and Surcharges, decided February 28, 1936, and reported in 214 I. C. C. 174, the Interstate Commerce Commission, after conducting an extended investigation, found that passenger fares of 2 cents per mile for transportation in coaches and 3 cents per mile for transportation

in sleeping or parlor cars throughout the United State would be reasonable. In the same case the Commission referred to what it described as the "Experimental coach fare" of 1.5 cents then being maintained by certain railroads in the southeast and, although approving the reasonableness of a coach fare of 2 cents per mile, held that the reduced coach fare of 1.5 cents was not "unlawful."

As previously indicated, effective November 15, 1937, the Southeastern roads increased their basic one-way fare from 1.5 cents per mile to 2 cents per mile. Subsequently, certain of the Southeastern carriers, not including however, the Illinois Central System, Gulf, Mobile and Ohio Railroad and the St. Louis-San Francisco Railway, and possibly some of the smaller roads, concluded it would be to their advantage to restore the former one-

*[21]

way coach fare of 1.5 cents *per mile. This was done effective January 15, 1939.

By its order of January 21, 1942, in Ex Parte No. 148, the Interstate Commerce Commission, upon petition of the railroads operating throughout the United States, approved a uniform increase of ten per cent in all passenger fares with certain provisions as to the disposition of fractions. Accordingly, passenger fares throughout the United States were increased ten per cent effective February 10, 1942. The general basis of coach fares, i.e., 1.5 cents per mile, applicable in the Southeast, with the exceptions heretofore mentioned, automatically became 1.65 cents per mile. On the other hand, the former fare of 2 cents per mile which was being maintained by the railroads in all other parts of the country, including some of the railroads in the Southeast, became 2.2 cents per mile. This ten per cent increase was also approved by the Tennessee Commission for intrastate travel on lines then maintaining a 2 cent per mile basis as well as lines maintaining a basic fare of 1.5 cents per mile.

MR. JOUROLMON: I wish to interpose an objection to the question and the answer, so far as it attempts to construe the

orders of the Interstate Commerce Commission, which are the best evidence of the action taken by the Interstate Commerce Commission.

EXAMINER McGRATH: Well, that objection is sound. The decisions will speak for themselves.

*[22]

*MR. JOUROLMON: Thank you.

MR. GWATHMEY: Mr. Examiner, of course, we merely are undertaking to review the history of this matter, and in so doing we have necessarily to refer you to a decision of the Interstate Commerce Commission.

There has been no attempt to interpret the decisions, but we state the facts as found by the Commission. This is merely a narrative discussion, setting forth the action which the Commission has taken, and insofar as any attempt to or any purpose to interpret the Commission's action, of course, Mr. Jourolmon's objection is sound, and I am glad to have it understood that the testimony is not offered for any such purpose.

Q. (By Mr. Gwathmey) Mr. Gaffney, do the passneger trains operated in the state of Tennessee carry both interstate and intrastate passengers?

A. Yes, they do.

Q. Do interstate and intrastate passengers frequently ride on the same trains and in the same coaches?

A. Yes, they do.

Q. Do you, as an experienced railroad passenger traffic officer, know of any reason which would justify the maintenance of a fare of only 1.65 cents per mile for intrastate coach transportation within the State of Tennessee, when an interstate passenger

*[23]

traveling to or from points within the state is required *to pay 2.2 cents per mile?

A. No.

Q. From a traffic standpoint are there any differences in the surrounding circumstances and conditions pertaining to the two types of transportation?

A. Absolutely none.

Q. With the present differences between intrastate and interstate fares, is it possible for a passenger to defeat interstate fares to and from points in Tennessee by buying an intrastate ticket for a part of a trip?

A. Yes.

Q. Have you prepared an exhibit which illustrates this situation?

A. Yes.

Q. Will you distribute that exhibit, please?

A. Yes.

MR. GWATHMEY: And may we ask that it be marked for identification Exhibit No. 2.

EXAMINER McGRATH: It will be so marked.

(Exhibit 2, witness Gaffney, marked for identification.)

Q. (By Mr. Gwathmey) Go ahead, Mr. Gaffney, and illustrate that.

A. As one illustration, the published interstate one way coach fare Nashville, Tennessee, to Chattanooga, Tennessee, is $3.37

*[24]

(2.2 cents per mile). It is possible to purchase a *one way coach ticket from Nashville to Anderson, Tennessee, at the intrastate fare $1.71 (1.65 cents per mile) and pay cash on train from Anderson, Tennessee, to Chattanooga, Tennessee, at interstate fare of $1.10 (2.2 cents per mile), total Nashville, Tennessee, to Chattanooga, Tennessee, (intrastate trip) $2.81, thereby defeating the through, published interstate fare by $.56.

I file Exhibit No. 2 giving a number of illustrations or examples of possible reductions of this character. Many others could be given.

MR. MILLER: I would like to interpose an objection to the exhibit. It is offered for the purpose of showing possibilities, and yet there is no schedule of trains here which indicates that the possibilities are either possible or practical, and for that reason I think the exhibit lacks very essential material.

THE WITNESS: No schedule of the trains?

EXAMINER McGRATH: Can you develop that information?

Q. (By Mr. Gwathmey) Mr. Gaffney, you are the General Passenger Agent of the N. C. & St. L. Railway, are you not?

A. Yes, sir.

Q. And you are entirely familiar with the schedules of passenger trains?

A. Yes, sir.

Q. And the operation of passenger trains?

*[25]

*A. Yes, sir.

Q. Please state whether or not you have given here typical illustrations of instances in which it is as a fact possible for a passenger to defeat the through fares?

A. I have, sir.

Q. In the manner in which you have stated?

A. I have, sir.

MR. GWATHMEY: I ask that the objection be overruled.

EXAMINER McGRATH: Does that answer your objection, Mr. Miller?

MR. MILLER: Well, it—he says so, but I think the testimony ought to demonstrate the fact.

MR. JOUROLMON: We will just have to develop that on cross examination, Mr. Examiner.

EXAMINER McGRATH: Yes.

MR. JOUROLMON: He has made the statement.

EXAMINER McGRATH: The objection will be noted. Proceed.

MR. GWATHMEY: Mr. Examiner, I don't think it is necessary to burden the record by having this witness enumerate here the schedules of all of these passenger trains. We will later on, if desired by counsel for the O. P. A. file a schedule of our passenger trains showing just what—final time tables, showing just what the schedules are.

MR. MILLER: That would be fine, I would be perfectly will-

*[26]
ing to let that schedule be filed as supplementary, a supple *mentary exhibit to this to show how the various connections on this exhibit are made. I think that would be very helpful.

MR. GWATHMEY: I understood the Examiner has directed me to proceed, is that correct?

EXAMINER McGRATH: That is right.

Q. (By Mr. Gwathmey) Mr. Gaffney, do passengers actually defeat the interstate fares in the manner you have indicated?

A. While it will be appreciated this is a difficult and almost impossible matter to prove, it is common knowledge advantage has been taken by interstate passengers buying tickets at the lower intrastate fare to some points and rebuying from such points, or paying cash fares on trains to destinations. The condition which permits of this does exist but it is difficult to police.

MR. MILLER: I want to object to the last sentence of that testimony on the ground that he doesn't know that this condition does exist of his own personal knowledge, and I object to the answer on the ground it is hearsay.

EXAMINER McGRATH: What is the basis of your testimony, Mr. Gaffney?

THE WITNESS: Why, Mr. Examiner, we do hear from our conductors and others that this is being done, and I have had knowledge of that down during the years. Only recently one case, we know that one—

EXAMINER McGRATH: We are only concerned with the

*[27]

present *time, the situation that prevails at the present time.

THE WITNESS: We do get information, of course, as I say, I can't trace it down and say the name of the persons, but we do know it is being done. We do know of people buying tickets from Nashville to Memphis, Tennessee, and riding to points down in Texas by rebuying, and to Louisiana, and places like that. The public gets on to these things, they don't tell you when they are going to do a thing like that, and you can't put your fingers on it. We know it is being done.

Q. (By Mr. Gwathmey) You are the passenger representative of the company, and it is your business to keep in touch with such matters, is that true?

A. Yes, sir.

Q. You are constantly getting reports from your representatives, conductors and otherwise, as to what actually happens?

A. We certainly are, sir.

MR. GWATHMEY: Mr. Examiner, I submit that the objection does not go to the relevancy.

EXAMINER McGRATH: The objection is overruled.

MR. JOUROLMON: I think that another objection to the answer which was originally made, which may have healed some of the things that have been said is that it is based on what he calls "common knowledge." There is no definition of just what common knowledge is.

EXAMINER McGRATH: You can ask him and develop that

[28]

on cross examination.

MR. JOUROLMON: That is simply another way of saying that it is a conclusion of the witness, an opinion, rather than based on any actual, factual information.

EXAMINER McGRATH: Let's get it clear on the record, is that what it is, an expression of your opinion, or is it based on information that you have received from conductors and others in the employ of the railroad?

THE WITNESS: It is based on information I have received from conductors and other employees of our railroad.

Q. (By Mr. Gwathmey) In the regular course of your business?

A. Correct, sir.

MR. MILLER: I would like to point out it is not an impossibility to bring some of the railroad employees into the hearing so that we will have the opportunity to cross examine them concerning this fact. And that is the basic reason for excluding hearsay in a public hearing, is the fact that we do not have opportunity

to cross examine the people who do know or who have first hand knowledge of the situation, and we do not have this opportunity at this time, from this witness.

EXAMINER McGRATH: The Examiner has ruled, and that ruling stands.

Q. (By Mr. Gwathmey) Have you prepared an exhibit illustrating that the present lower intrastate coach fares in Tennessee result in discimination against interstate passengers? If so,

*[29]

*please offer your exhibit and explain it.

A. Yes. I file Exhibit No. 3 showing this information.

MR. GWATHMEY: May we have this identified as No. 3?

EXAMINER McGRATH: No. 3, yes.

(Exhibit No. 3, witness Gaffney, marked for identification.)

MR. MILLER: I would like to object to this exhibit on the ground it calls for a conclusion of law by the witness. The question is whether the exhibit has been prepared illustrating discrimination against interstate commerce. That is the issue to be decided.

MR. GWATHMEY: I didn't read it that way.

MR. MILLER: I'm sorry, I misunderstood.

MR. GWATHMEY: I read it discrimination against interstate "passengers."

MR. MILLER: You used the word "discrimination."

MR. GWATHMEY: Yes.

MR. MILLER: I think that is the conclusion involved, and I think that is for the Commission to decide.

MR. GWATHMEY: Very well, I will modify the question, if it pleases counsel for the O. P. A., and make it read "Illustrate the differences in charge to interstate versus intrastate passengers." Does that satisfy you?

Q. (By Mr. Gwathmey) Go ahead.

A. I file Exhibit No. 3, showing this information. As an ex-

*[30]

ample of this, the interstate coach fare on basis of 2.2 *cents per

mile Nashville, Tennessee, to Chattanooga, Tennessee, distance 151.7 miles is $3.37, whereas, the intrastate fare on basis of 1.65 cents per mile from Nashville, Tennessee, to Jackson, Tennessee, a distance of 152.9 miles is only $2.60, a difference of $.77. The examples shown in the exhibits are only illustrative and many more cases could be supplied.

Q. Please look at example No. 7, that is the rate from Jackson, Tennessee, to Knoxville, Tennessee. In that connection you show what the interstate charge is, and what the intrastate charge is. How does that work out, and how does it operate in its effect upon the handling of a passenger?

A. It shorthauls the N. C. & St. L. Railway in this manner, for instance, a passenger can apply at our ticket office in Jackson, Tennessee, and he will be sold a ticket from Jackson, Tennessee, to Knoxville, Tennessee, via the N. C. & St. L. Railway connection, transfer being added to that rate, Tennessee Central to Harriman, thence Southern Railway, for a total charge of $6.95, whereas if that same passenger should use our own line, N. C. & St. L., to Chattanooga, thence Southern Railway to Knoxville, it would cost him a total of $8.18.

Q. In other words, your line between Nashville and Chattanooga passes out of the state?

A. That is right, it is an interstate trip.

Q. So it is an interstate trip?

A. Yes, sir.

*[31]

*Q. And there you have the opportunity for a passenger to obtain a lower fare by following an intrastate route than he would obtain—

A. Yes, sir.

Q. —if he took the interstate route?

A. Making a difference of $1.23.

Q. Do passengers do that so far as you know?

A. Yes, sir, they do do that.

MR. MILLER: I object to that unless it is qualified, on the ground it is hearsay.

MR. GWATHMEY: Mr. Examiner, the witness has stated that he knows.

EXAMINER McGRATH: Let the witness say.

MR. GWATHMEY: He can cross examine him he wants to.

EXAMINER McGRATH: What is the basis of that testimony, Mr. Gaffney?

THE WITNESS: Why, only recently our agent at Jackson wired into the office for a reservation from Nashville to Knoxville via the Tennessee Central, and he sold a through ticket from Jackson to Knoxville via that route.

Q. (By Mr. Gwathmey) Does that mean that the Southern Railway is cut out of that business?

A. The Southern Railway—no.

Q. Shorthauled?

A. Shorthauled, yes.

*[32]

*Q. Take a movement from, No. 8, Memphis to Knoxville, and explain how that works.

A. A passenger could apply to either one of our ticket offices in Memphis for a ticket from Memphis, Tennessee, to Knoxville, Tennessee, ride our line to Nashville, transfer to the Tennessee Central to Harriman, thence Southern Railway. That ticket would be sold to him at the rate of $7.10, whereas if he was going direct over the Southern Railway, for instance, which is the short line from Memphis to Knoxville, if he was going directly over that line or coming via Nashville, our line to Chattanooga, thence Southern Railway, it would cost him $9.39; a difference of $2.29.

Q. So in that instance also is the interstate movement broken down or prevented by reason of the ability to obtain a lower fare intrastate?

A. Yes, sir, it is.

Q. Did the Interstate Commerce Commission—

A. I think it would be well for me at this point to file those

two exhibits that the L. & N. Railroad asked us to file, in the same connection.

Q. Have you two similar exhibits which will disclose typical examples of differences in the case of the Louisville & Nashville Railroad?

A. Yes, sir.

Q. Which one will be first?

*[33]

*A. The first exhibit is a statement showing the one way interstate cash fare from or to Louisville and Nashville Railroad point in Tennessee compared with the fares based on combination of fares to or from intermediate Tennessee points.

MR. GWATHMEY: This will be No. 4.

EXAMINER McGRATH: 4, yes.

(Exhibit No. 4, Witness Gaffney, marked for identification.)

Q. (By Mr. Gwathmey) And the second exhibit is headed what?

A. The second exhibit is headed "Statement Showing Tennessee Intrastate Oneway Coach Fares from or to Representative L&N Railroad Points to Tennessee, Compared with Interstate fares from or to Points on the L&N Railroad in Tennessee for Equal Distance Trips," and also showing the amount of Tennessee intrastate under the interstate fares. That will be Exhibit 5.

EXAMINER McGRATH: 5, yes.

(Exhibit No. 5, Witness Gaffney, marked for identification.)

Q. (By Mr. Gwathmey) Mr. Gaffney, as I understand it, these two exhibits are substantially similar to your Exhibits 3 and 4?

A. Yes sir.

Q. As to your railroad, only applying to the Louisville and Nashville Railroad, is that right?

A. That is correct. I would like to say for the record, the

figures shown in the last column of our NC&St.L exhibits 2 and
*[34]
*3, the dollar sign should appear there.

Q. Where, at the end of the last column?

A. For instance, like Nashville, Tennessee, to Stevenson, Alabama, it shows the distance and the fare per mile and the oneway coach fare. That should be a dollar sign.

MR. GWATHMEY: All right.

MR. JOUROLMON: I think we will have to make an objection to the filing of these exhibits by this witness unless he is prepared to testify that they were made under his direction, and that he is fully conversant with them. They seem to be the exhibits of another carrier.

MR. GWATHMEY: This witness is testifying on behalf of the Louisville and Nashville Railroad, as well as all other Tennessee railroads. These two exhibits are simply taken from tariffs and are compilations showing the actual differences in fares over the line of the L&N Railroad. Anybody can verify them from the tariffs.

EXAMINER McGRATH: That is all they are designed to show?

MR. GWATHMEY: That is all.

MR. JOUROLMON: They will be accepted with that explanation, under those circumstances.

EXAMINER McGRATH: You withdraw your objection then?

MR. JOUROLMON: Yes, I do.

Q. (By Mr. Gwathmey) Mr. Gaffney, did the Interstate Commerce Commission have before it in the original and reopened pro-
*[35]
ceed-*ing in Ex Parte 148 a full and complete record of the facts concerning revenues, expenses, operating conditions, financial conditions, etc., of the southern railroads, including the Tennessee lines, as well as of railroads operating in other parts of the South?

A. Yes. It is my understanding copy of the record is on file

with this Commission, and also with the Tennessee Commission.

Q. Was a copy of that record lodged with the Railroad Commission of Tennessee, as well as other state commissions in the South?

A. Yes sir.

Q. In the report and order of the Interstate Commerce Commission on the further hearing in Ex Parte 148 decided April 6, was there any modification made in any way in its previous findings in connection with the present interstate standard passenger fares?

A. No, there was not.

MR. JOUROLMON: Here again I have that same objection with reference to this witness' interpretation of what the ICC has done, because the ICC's own order is the best evidence.

MR. GWATHMEY: I will ask, in view of that objection, that the witness be permitted to read three lines, the concluding statement on this subject.

MR. MILLER: It would seem that would be proper material on brief, would it not, Mr. Gwathmey?

MR. GWATHMEY: Yes.

*[36]

*EXAMINER McGRATH: The Commission's report will speak for itself.

MR. GWATHMEY: Very well, sir.

EXAMINER McGRATH: There is no necessity of repeating it in the record. You have reference to it. Is there some portion that you wish to comment upon? If so, give us specific reference to that.

MR. GWATHMEY: I haven't got the page reference, unfortunately, but it is the ultimate finding of the Commission with respect to passenger fares.

EXAMINER McGRATH: That is enough.

MR. JOUROLMON: If you simply wish to place in the record these words, which I will read, I see no objection to doing it, that the Commission said "We find no modification of our previous

findings, orders, and authorizations respecting the present interstate standard passenger fares necessary.—"

MR. GWATHMEY: That is all I proposed to read or would have read if you had not objected.

MR. JOUROLMON: All right, I am quite willing for you to do that.

MR. GWATHMEY: Mr. Examiner, I would like to have incorporated into the record by reference, being public documents now in the files of the Interstate Commerce Commission, a petition which was filed by the Office of Price Administration dated

*[37]

July 31, 1943, asking for a general investigation of interstate passenger fares in the South; also a copy of the written reply to that petition filed by the respondent railroads dated August 9, 1943; also a petition filed by the Alabama Public Service Commission asking for a similar investigation; a petition filed by the North Carolina Public Utilities Commission asking for a similar investigation; the letter which the railroads wrote to the Secretary on September 8, 1943, asking that their original reply to the OPA petition be considered also as their reply to the petition of the Alabama Commission; also Secetary Bartell's letter of October 13, 1943, addressed to Hon. Stanley Winborne, Chairman, North Carolina Utilities Commission, Hon. Hugh White, President, Alabama Public Service Commission, and Hon. Prentiss M. Brown. Price Administrator, in which it was stated, after referring to the three petitions which I have mentioned "You are advised that the Commission upon consideration of the petitions in conference on October 11, 1943, voted to deny the petition." I have copies of that letter here which I will be glad to distribute if anybody wants them.

MR. MILLER: Mr. Examiner, I have no objection to that if —I see no objection to this request, if the record can show that the vote of the conference was Commissioners Mehaffee, Rogers and Aldredge voting for the petition and Commissioner Lee present but not voting, and Commissioner Eastman not present. That, of

*[38]
course, will be shown by the Commission's *official records.

MR. GWATHMEY: Mr. Examiner, this is the first time I have ever heard a suggestion made that there should be incorporated into a formal record before this Commission the matter of how the Commission may have voted on some case.

EXAMINER McGRATH: I don't think that is essential. However, it seems to me you are going to unnecessary length to establish a simple fact that those petitions were filed and the action taken on them. Wouldn't that be sufficient?

MR. GWATHMEY: I am merely asking that they be considered as part of the record by reference, and I have given reference to each one.

EXAMINER McGRATH: Is there objection to that procedure?

MR. MILLER: May I make this statement? It seems to me that this Commission can take judicial notice of its own minutes and actions.

EXAMINER McGRATH: That is true.

MR. GWATHMEY: It may be understood these are incorporated by reference?

EXAMINER McGRATH: Just request that the Commission take judicial notice of those petitions and the action taken on it.

MR. GWATHMEY: I would like, if there is no objection, to have the petitions themselves considered as a part of this record, for the reason that the petitions show the grounds upon which the requests for investigation were made.

*[39]

*EXAMINER McGRATH: Is there any objection to them being made a part of the record for that purpose?

MR. MILLER: I have no objection.

EXAMINER McGRATH: All right, they will be so considered.

MR. GWATHMEY: Thank you.

Q. (By Mr. Gwathmey) Mr. Gaffney, are the railroads, including the Tennessee lines, encountering any particular difficul-

ties or incurring any unusual expenses in connection with passenger train operations under present conditions?

A. Yes, they are. The handling of military movements necessarily entails substantial added costs. Equipment must be assembled at point of origin and this, in many instances, necessitates dead-heading equipment long distances. In addition, after the movement has been completed the equipment must in many cases be returned from destination point.

To comply with the Government requirements, it is necessary for a "train escort" to ride troop trains. This, of course, is an added item of expense.

That proper protection may be accorded, in accordance with the requirements of the Government for military movements, it has been necessary to increase the personnel in general offices in order that such offices may be on duty, in some instances, for 24 hours each day and others from 12 to 16 hours per day. This also is an item of additional expense.

*[40]

Because of the volume of military, as well as civilian, *travel the railroads have been compelled not only to increase their general office forces but also to increase the forces in ticket agencies, another item of expenses.

Large sums of money have been spent in the last decade in remodeling and air-conditioning passenger equipment all in an effort to recapture a portion of the traffic using other modes of transportation, particularly from the highways. While the monies expended for these improvements have provided additional comforts and conveniences to the traveling public at, so far as coach travel is concerned, the lowest charge ever made by the railroads, it materially increased the cost of service.

Several months ago, Mr. Fitzgerald Hall, our president, had a conference with his operating and traffic officials and discussed with them at considerable length the entire passenger traffic situation as at present existing on the NC&StL; and directed that sufficient help, regardless of number or expense, be employed at

our stations and in our trains in order to more satisfactorily take care of the traveling public. He stated, for instance, that on our trains where we now have one porter to employ as many additional porters as necessary to keep our coaches clean and sanitary and for the assisting of women and children in the handling of their baggage on and off our passenger trains even though this meant placing a porter on each coach.

Mr. Hall also authorized the employment of passenger agents
*[41]
*at our larger terminals solely for the purpose of keeping closely in touch with the traveling public and for the purpose of solving any travel problems they may have.

The NC&StL Railway alone has air-conditioned and modernized thirty (30) of its passenger cars and three (3) dining cars, installing in the coaches modern rest-rooms for both men and women, some of them with reclining chairs. In so doing the seating capacity was reduced from 88 to 58 passengers. The modernization of these coaches, which provides fewer seats and therefore less revenue, cost us from $10,000 to $17,000 per car.

We purchased from the Pullman Company twenty-two (22) Pullman parlor cars and converted them into day coaches. Also twenty (20) new locomotives for use in both passenger and freight service.

Other lines operating in Tennessee have also spent large sums of money in the purchase of new and the modernization of coaches. For instance, I understand the Southern Railway System Lines have air-conditioned or purchased new with air-conditioned facilities—189 coaches.

All of these facilities and services add to the cost of operations. They are available to Tennessee intrastate passengers as well as interstate passengers to or from Tennessee or passing through Tennessee, and the interstate passenger pays for this service on
*[42]
the basis of 2.2 cents per mile, *whereas, the intrastate passengers pay but 1.65 cents per mile.

Q. Please state for the record the number of troop trains op-

erated on the NC&StL Railway during the months of August and September, 1943, and the number of cars handling troops operated in your regular trains during these months.

A. On the NC&StL Railway, during the month of August, 1943, there were operated 160 troop trains. One hundred and twenty-four (124) regular trains were operated in two sections and four hundred and thirty-five (435) extra cars handling troops were operated in regular trains. During September there were operated on the NC&StL Railway one hundred and three (103) troop trains. One hundred and twenty (120) regular trains were operated in two sections and four hundred and sixty-nine (469) extra cars handling troops were operated in regular trains.

Q. Does the Government pay full tariff fares for troop movements?

A. Between points between which no land grant is involved, an allowance of 5 per cent is made the Government from commercial fares of all classes. For example Memphis to Nashville, the intrastate commercial fare is $4.00 less 5 per cent deduction, 20 cents, to the U. S. Government gives net coach fare, intrastate, $3.80. There is no land grant in Tennessee.

Q. At the time the one-way coach fare for interstate transportation was increased to 2.2 cents per mile, was any exception made as to members of the Armed Forces in uniform on furlough?

*[43]

*A. Yes, there was. Upon the request of the United States Government, reduced round-trip coach fares on the basis of 1¼ cents per mile were authorized for the personnel of the United States Army, Navy, Marine Corps, Coast Guard, Women's Naval Reserves, Women's Army Auxiliary Corps, Women's Coast Guard Reserves and Women's Marine Corps Reserves, traveling in uniform and at their own expense when on official leave, furlough or pass. This same fare is also accorded nurses, when not traveling in uniform, upon presentation of proper identification and, likewise, is accorded under similar conditions to the personnel of military forces of the several allied nations.

Q. Has there been any proposal to increase this furlough fare for intrastate traffic travel in Tennessee?

A. No proposal has been made to increase the round-trip coach fares for this character of traffic, either interstate, or intrastate.

Q. So far you have dealt primarily with the matter of one-way coach fares. The railroads are here seeking not only to put intrastate coach fares on the interstate basis, but are also seeking to make certain changes in round-trip fares not only in coaches but in Pullman cars. Please explain the present set-up of round-trip fares for interstate travel and state what relief the railroads are here seeking with respect to their intrastate round-trip fares in coaches and Pullman sleeping and parlor cars.

*[44]

*A. Prior to October 1, 1942, in the Southeastern and other territories, there was in effect round-trip fares constructed on various basic fares per mile and with varied return limits.

With the approval of the Interstate Commerce Commission, effective October 1, 1942, the lines generally in all territories in the United States adopted two separate character of round-trip fares, i.e., one good for transportation in Pullman sleeping or parlor cars and the other good for transportation in coaches only, both to bear a uniform return limit of three months from date of sale and these round-trip fares are now in effect for interstate travel.

The fares so approved in Southeastern territory for tickets good for transportation in sleeping or parlor cars are constructed on basis of 166-2/3 per cent of the one-way fare of 3.3 per mile good for transportation in sleeping or parlor cars, or 2.75 cents per mile for the distance traveled.

The round-trip fares good for transportation in coaches are constructed on the basis of 180 per cent of the one-way coach fare of 2.2 cents per mile or 1.98 cents per mile for the distance traveled. The Tennessee carriers are seeking to establish exactly

the same basis of round-trip fares for intrastate transportation in Tennessee as is now in effect for interstate traffic to and from points in Tennessee. To accomplish this it is proposed that the current thirty day limit round-trip coach fare on basis of 2.475

*[45]

cents per mile and the *six months limit fare on the basis of 2.75 cents per mile, both good for transportation in sleeping or parlor cars; be cancelled and that there be substituted in lieu thereof the round-trip three months limit fare on the basis of 2.75 per mile; also, that the current fifteen day limit coach fare on basis of 1.485 cents per mile and the sixty day round trip coach fare on basis of 1.65 cents per mile be cancelled and that there be substituted in lieu thereof round-trip three months limit fare on the basis of 1.98 cents per mile.

Q. Aside from any question of the revenue involved, would the placing of the intrastate fares on the interstate bases be of any benefit to the carriers at this time?

MR. MILLER: I would like to object to that question on the ground it is not relevant to the issues in this proceeding.

MR. GWATHMEY: I cannot conceive of any reason why it is not relevant, Mr. Examiner. Perhaps counsel will state.

MR. MILLER: This is a case of preference, prejudice and discrimination against interstate commerce, and it does not seem to me that the position of the carriers in this respect is at all material.

EXAMINER McGRATH: The objection is overruled.

MR. GWATHMEY: The OPA itself and the Commission both have raised the issue of reasonableness.

EXAMINER McGRATH: Answer the question.

THE WITNESS: Yes, under the existing conditions it would

*[46]

*be most helpful to ticket agents, conductors and others if the several classes of intrastate fares were made uniform with the interstate fares and it would assist materially in giving more prompt service as it would require only consulting the one publication in

which the character of fare, or fares, desired was published. Whereas, at the present interstate fares are published in one set of tariffs and the intrastate fares in others.

It must be remembered that the personnel in the ticket offices has been greatly increased and this personnel, of a necessity, is untrained and everything that would assist in simplifying the work is to be highly desired. This statement applies with equal force to the new personnel in the general offices.

Q. (By Mr. Gwathmey) Does that complete your statement, Mr. Gaffney?

A. Yes sir, it does.

MR. GWATHMEY: Mr. Examiner, we ask at this time that the exhibits that have been identified by the witness marked Nos. 1 to 5, inclusive, be received.

EXAMINER McGRATH: The exhibits are received in evidence.

(Exhibits 1 to 5, inclusive, Witness Gaffney, received in evidence.)

MR. GWATHMEY: The witness is ready for cross examination.

*[47]

*CROSS EXAMINATION

Q. (By Mr. Jourolmon) Mr. Gaffney, that last answer that you gave has to do with uniformity, is that right?

A. That is correct, sir.

Q. In other words, you want to have uniform rates, whether it it is interstate or intrastate, is that right?

A. No, Mr. Jourolmon, we would like to have the increased fares because we need them. We need them, and that is the reason for that.

Q. Isn't it true that this last answer really let the cat out of the bag, and that that is the real issue that the railroads are thinking about, rather than trying to increase their already swollen revenues?

A. No sir, that is not correct.

Q. You have not said anything in your testimony so far with reference to the revenue position of these various roads?

A. No sir, but a witness will follow that will give that evidence.

Q. As far as you are concerned, you are a passenger traffic agent of your carrier?

A. That is correct.

Q. And you have been in that work practically all of your life?

A. That is correct.

Q. That is your specialty?

*[48]

*A. Well, yes, in other words, I will qualify that and say this, I have been—unfortunately I have not been a rate and tariff man, I have been a passenger traffic, mostly soliciting man, and I have been head of the passenger department.

Q. Do you regard it as of great importance that your ticket people, your conductors and all others who deal with tickets should have one fare that they can charge intrastate passengers, and the same fare that they can charge interstate passengers, that is the point you are making in this last answer?

A. One—yes, for coaches and Pullmans. Of course, we want a higher fare in Pullman than coaches. We would like to see it uniform all over the United States, yes sir.

Q. That would simplify the work of your people?

A. It certainly would.

Q. And that is a very important consideration so far as you are concerned?

A. That is one.

Q. As a passenger traffic representative of your carrier, here concerned?

A. That is correct.

Q. How long have you been in that?

A. Forty-one years now all told.

Q. And that has always been in the same line and branch?

A. That is right.

*[49]

*Q. Of your carrier's service?

A. That is right.

Q. That means then that you were in that same position during the entire period of the historical changes in rates which you have described, is that right?

A. Yes, during all that period I have been with the NC&StL, but I will say to you again, sir, that I am not a rate and tariff man. Most of that period has been soliciting traffic agent for the Nashville, Chattanooga & St. Louis Railway.

Q. When these rate changes have taken place from time to time during the course of history that you have described, has it been your duty to appear before the various regulatory bodies in which your carrier does business, in the territory in which your carrier does business, and make representations with reference to obtaining these changes?

A. That is right.

Q. You have done that with reference to the Interstate Commerce Commission?

A. No, Mr. Duggan handles the Interstate Commerce Commission hearings.

Q. You have done it with reference to the Tennessee Railroad and Public Utilities Commission?

A. I certainly have.

Q. You have said a good deal about the southern carriers placing in an experimental lower fare, lower coach fare of 1.5

*[50]

*cents per mile. What year was that done in?

A. April 1st, 1933, and November 30th, 1933, inclusive, the Mobile & Ohio Railroad, Louisville and Nashville Railroad and the Nashville, Chattanooga & St. Louis Railway had in effect experimental one-way fares on basis of three cents per mile in sleeping cars or parlor cars without surcharge, and two cents per mile in coaches. That was one of the experimental periods. There is another one.

Q. What I am interested in is when your railroad, your carrier, the NC&StL came to the Tennessee Commission and put in these experimental fares, which are the fares in issue right here now, the 1.5 fare?

A. I will have to get that record then, I don't know exactly when that was. Oh, yes, from December 1st, 1933, to November 14th, 1937, inclusive, three cents per mile in sleeping or parlor cars, and 1.5 cents per mile in coaches, except that the coach fare on certain railroads which we have already named was 2.2 cents per mile.

Q. By that you mean that at sometime shortly prior to December 1st, 1943, you came to the Railroad and Public Utilities Commission, and for your carrier placed in effect this 1.5 rate?

A. That was a reduction in fares, Mr. Jourolmon, and it was not necessary to appear before the Commission. All we had to do was just file our tariffs.

Q. Do you recall that of your own knowledge that that was

*[51]

all *that was done at the time?

A. As I recall, that was all, because that is all that was necessary, as you know. Whenever we make a reduction in fares it is not necessary to appear before you. All we have to do is file our tariffs with you. When we increase them that is a different story.

Q. Well, in this particular case didn't the Commission turn down your filing of the 1.5 fare because of the fact it was filed as an experimental fare and the Commission declined to entertain an experiemental fare?

A. I don't recall that.

Q. You have no recollection of how that was established?

A. No, I do not, unfortunately, I do not.

Q. Is it your understanding that that rate was finally placed in effect by the Tennessee Commission as an experimental fare?

A. That would be my understanding, it was my understand-

ing it was an experimental fare. It certainly was our understanding.

Q. You have no recollection of the fact that the Tennessee Commission refused to allow the 1.5 fare to be established as an experimental fare, but insisted that the carrier withdraw that rate filed and bring in a permanent rate schedule?

A. No, I don't recall that, Mr. Jourolmon.

Q. To be filed as—

A. I don't recall that.

Q. —as a permanent rate fare?

*[52]

*A. I do not, sir.

Q. You have no recollection of that.

A. No, I have none.

Q. The real truth of the matter is your answer is you have no recollection of whatever happened at that time?

A. No, I haven't. As I said, the usual proceeding with the Tennessee Commission, when a reduction is to be made in the fare or a rate, all we have to do is file our tariffs with the Commission.

Q. And you have simply assumed that is what happened at the present time?

A. I am pretty certain that was what happened. I don't recall anything else in connection with it other than that has always been our policy in filing tariffs with the Tennessee Commission.

Q. You don't recall that there were any conferences with the Commission personally, Mr. Hendley or anyone else with reference to it?

A. I don't recall that, I do not.

Q. You have testified that the Interstate Commerce Commission entered an order on August 1st, 1942, approving an increase from 1.65 to 2.2 per mile for interstate traffic, making same effective on October 1, 1942, and have inferred that there was no protest by the Tennessee Commission, is that the effect of your testimony?

A. Yes sir, no protest of record. I have not heard of any on
*[53]
*record.

Q. Do you know whether any notice of that proceeding was given to the Tennessee Commission or to the State of Tennessee?

A. I do not.

Q. Mr. Gaffney, can you give for the record the percentage of revenues which are derived from interstate traffic and the percentage which are derived from intrastate traffic on the NC&StL Railroad?

A. I presume that could be secured, Mr. Jourolmon. I am not positive it could, I am not an accounting witness, I couldn't say whether it could or not.

EXAMINER McGRATH: Will Respondent have that information to present through some other witness?

MR. GWATHMEY: What was the question?

(The question was read.)

MR. GWATHMEY: This witness has no such information, and I doubt whether it is practicable to give it by any other witness. So far as I know, no witness here has that data. That is correct, isn't it, Mr. Clark?

MR. CLARK: Yes.

Q. (By Mr. Jourolmon) As a passenger traffic representative of many years experience, do you know how your business divides between intrastate and interstate?

A. I do not.

Q. Has there ever been a time in the 41 years that you have
*[54]
*been connected with the NC&StL Railway that a study was made in order to determine how many interstate passengers you were carrying as compared with intrastate passengers?

A. I don't recall any such study having been made.

Q. What would be involved in making such a study, Mr. Gaffney?

A. Well, considerable would be involved, Mr. Jourolmon. It would mean practically an off-and-on check of all our passenger

trains to determine that, going through all our records of tickets sold.

Q. It would simply be a matter of taking your ticket records, record by record, and checking all of those which were from points through Tennessee, from points in Tennessee to points outside of Tennessee, and placing them in one column, and placing all tickets between points in Tennessee in another column?

A. I am not an accounting witness, I don't know whether that would be all involved or not. I don't think it would, I think there is more to it than that.

MR. GWATHMEY: Are you going to pursue this line of questions any further?

MR. JOUROLMON: Not very much further.

MR. GWATHMEY: I want to say that I don't understand the purpose of this line of interrogation. If Mr. Jourolmon has in mind to call upon the railroads to furnish certain information, of course he has that privilege. But merely to ask this witness over

*[55]

and over again whether he has made certain in *vestigations in the past or not does not prove anything of relevance to this case.

MR. JOUROLMON: I am simply seeking, Mr. Examiner, to find out all the information I can with reference to what the extent of discrimination, if discrimination there be, amounts to. I don't know that there is a single intrastate passenger so far, I assume that there are, but we have certainly had no breakdown of that.

EXAMINER McGRATH: You may proceed.

MR. GWATHMEY: I thought we made it clear we would have a witness later who will deal fully with the question of revenues from intrastate business.

Q. (By Mr. Jourolmon) Now, you have stated that you know of no reasons why there should be any discrimination or difference, using the word "discrimination" in that meaning at the present time, between intrastate passengers and interstate passengers within Tennessee, is that right?

A. I have.

Q. The rates of your carrier are made on an average basis, are they not?

A. If you are going into the question of rates, as I said before, I am not qualified as—unfortunately I am not qualified as a rate and tariff man. If you want to ask questions like that, I have a witness here that will answer, and he will answer as you go along

*[56]

if you prefer, or we will put him on *the stand and let you ask him questions about the rates.

MR. GWATHMEY: I will say frankly I don't understand the question. Might I ask for an explanation of that question? You said rates, Mr. Jourolmon. Are you talking about passenger fares?

MR. JOUROLMON: Passenger fares. They are made on an average basis, are they not, that was my question.

MR. GWATHMEY: Do you understand what the question is?

THE WITNESS: No, I don't.

MR. GWATHMEY: I don't.

THE WITNESS: I am not a rate man.

MR. GWATHMEY: That's all right about that, but do you understand his question? The question is whether the rates are made on an average basis. I am frank to say I don't understand it. Perhaps Mr. Jourolmon can clarify it.

Q. (By Mr. Jourolmon) If you don't mean that, just what do you mean when you say that there were no conditions which would justify a difference in rates? You have testified there were no conditions that you knew of justifying a difference in two rates. Now, to that extent you are offering yourself as a rate witness, and I am simply trying to cross examine you to find out on what you predicate that statement which you have made in the record?

A. I will explain that to you. You take on our train from here

*[57]

to Chattanooga, we have an intrastate passenger and we *have an interstate passenger, both are riding on the same train, with the same accommodations, and yet we charge one 2.2 cents per mile,

and the man going from Nashville to Tullahoma pays 1.65 cents; that is what I have reference to.

Q. What I have simply said is that rates are made on the basis not of simply those two passengers, but on an average of all the passengers that the railroad carries, isn't that right?

A. No, that is not true, no.

Q. It is not made on the basis of trying to average out the costs to the carrier of carrying those thousands of passengers, but instead is based on what it costs to carry one particular passenger, is that right?

A. I don't catch your question, I don't know what you have reference to, frankly, I don't.

MR. JOUROLMON: Will the reporter read the question?

(Question read.)

THE WITNESS: I don't know.

Q. (By Mr. Jourolmon) That would mean that you would have to have a separate rate for each individual passenger that is carried because of the fact that no passenger's service is like that of any other passenger, isn't that true?

A. No, I wouldn't say that was true. You know yourself that a passenger riding say between here and Tullahoma, take the Dixie Flyer, and a passenger riding between here and Chatta-

*[58]

nooga on the same train, there is no reason in the world why *one should pay higher, a higher fare than the other.

Q. The point I have made is this, that you have, in making those rates, you have to take the average of what all of the passengers are doing, all of the interstate and all of the intrastate passengers?

A. No, that is not consideed, I am sure of that, no sir.

Q. If you assume that you have two entirely separate systems, one carrying interstate passengers and the other carrying intrastate passengers, and that your interstate passengers were all riding on the streamlined trains, and your intrastate passengers were all riding on open vestibule coaches, with kerosene lights

made in the year 1875, do you still say that there would be no difference in the price which should be charged to those?

A. I certainly do, and no conditions like that exist now days so far as I know.

Q. Well, there are no such conditions as that, I know, existing at the present time in reputable transportation circles, that is right, is it not?

A. Not that I know of, excepting we have in some instances, we did have on our branch lines some mixed trains where the coaches were not up to the standard of our main line trains.

Q. Now, that is the point, you have different standards of transportation on the NC&StL Railroad?

A. Yes sir.

*[59]

*Q. Is that right?

A. We have—well, we have some coaches, for instance, we have some coaches not as good as the others, in other words, some high class coaches, some higher class coaches than others. We would like to have all first class coaches if we could obtain them, but we cannot obtain them.

Q. If the average of intrastate passengers are riding in that sort of coaches, the lower class coaches, while the average of interstate passengers are riding in the best, modern, up-to-date equipment, would there be a justification for a difference in rates?

A. That condition does not exist.

MR. GWATHMEY: I think I will object to that question on the ground that there is no evidence here any such situation exists. It is purely hypothetical.

MR. JOUROLMON: Mr. Examiner, I have this witness now, and it simply means I will have to recall him after we have presented our evidence unless I can get an answer to that.

MR. GWATHMEY: You have that privilege.

EXAMINER McGRATH: You can do that. I think we will make better progress.

MR. JOUROLMON: He has made the statement that he knows of no conditions which justify any difference in cost, and I wanted to lay the ground work for something which might be coming.

*[60]

*Q. (By Mr. Jourolmon) You have testified that your railroad has been subjected to a considerable amount of increased expense by reason of the military program of the United States, is that right?

A. Yes sir.

Q. Do you know what that program consists of, what the transportation requirements consists of in that respect?

A. We have a transportation witness, Mr. Jourolmon, that can ansper about the transportation requirements, following me on the stand.

Q. Isn't the bulk of that transportation an interstate transportation?

A. The majority of it is interstate transportation.

Q. Interstate?

A. Although we have pretty heavy intrastate transportation on the NC&StL and other lines, too.

Q. Accordingly the substantial added costs of that transportation should largely be allocated to interstate travel rather than to intrastate travel?

A. I couldn't say that. I am not an accounting witness, I am not prepared to answer that question.

Q. You have stated that it has become necessary to increase the personnel in your general offices in order that in some cases they should be on duty for 24 hours each day, and in others

*[61]

from 12 to 16 hours per day. This is an item of *additional expense. What is the purpose of increasing your personnel in this way?

A. Mainly, in our own office, in our own general office, general passenger office, for the purpose of handling military traffic, principally.

Q. By that you mean—

A. Do you want to go further than the statement I made there?

EXAMINER McGRATH: Does that answer your question?

MR. JOUROLMON: It begins the answer to it, yes. That answers my question so far, yes.

Q. (By Mr. Jourolmon) Is that not due—I will ask you this leading question, and see if this states what it is due to. Isn't this necessity for increased personnel due to this, that there are so many trans-continental trips being made by soldiers and others at the present time, requiring anywhere from 15 minutes to 35 minutes, even up to an hour, to write up the ticket and get the tariff information that you have had to train a large personnel in order to take care of that, isn't that what that means?

A. That personnel in our ticket office not only takes care of interstate traffic, but intrastate traffic as well, which is very, very heavy.

Q. What is involved in taking care of an intrastate ticket? If I go up to your ticket window and say to the young lady down

*[62]

here at Nashville "Give me a ticket to Tullahoma," how long ordinarily does it takes that young lady to check tariffs and make study, to write up the ticket which she gives me?

A. I can't tell that, but I am glad you mentioned Tullahoma. We will sell five or six hundred tickets a day down there frequently to Tullahoma, Tennessee. The total number takes a long time to take care of it.

Q. It will take an average of about a minute each, will it not?

A. I would say perhaps that for her to sell a ticket.

Q. You can sell 500 tickets there in the same time—

A. That is Tullahoma. I am talking about Tullahoma, only, I am not talking about Memphis or other points.

Q. You can sell 500 tickets to Tullahoma in about the same

time that you could sell 10 tickets to Fort Bragg, California, or to other points over the United States, is that right?

A. No, I wouldn't say that, I couldn't say that, no sir.

Q. Have you ever had to stand in line there with a train due in an hour, and be ten people back from the gate, trying to get your ticket, have you had to do that?

A. No, I have not.

Q. Has your office made any study whatever of the time element involved, and the work units involved in handling interstate as compared with intrastate ticket selling?

A. No sir.

Q. Yet you have put in a large number of people?

*[63]

*A. Yes, take the depot ticket office at Nashville, we have more than doubled the personnel in the last year or year and a half.

Q. You have increased your office, and you have no knowledge of how large—or I mean your office force, and you have no knowledge of how large an increase has been occasioned by intrastate passengers and how large an increase has been occasioned by interstate passengers?

A. That would be awfully hard to figure, for anyone, even an accounting man.

Q. You next state that you have expended large sums of money to place air-conditioned passenger equipment on the NC&StL Railroad, is that right?

A. Yes sir.

Q. What is the difference in the cost involved in the air-conditioned equipment?

A. You mean what would it cost to air-condition a coach?

Q. Yes.

A. Is that the question?

Q. Yes, that is one question.

A. Somewhere between eight and eleven thousand dollars

I would say, to air-condition, and improve the seating capacity and all, accommodations.

Q. How many of those coaches have you?

A. Of the higher type we have about thirty of those.

*[64]

*Q. Do those coaches ordinarily travel behind Diesel-powered engines?

A. No, they do not, not on the NC&StL. Of course, that is what we are trying to do now, get rates increased so we can have Diesel-powered locomotives when this war is over.

MR. GWATHMEY: Would you pardon an interruption a moment?

MR. JOUROLMON: Go ahead.

MR. GWATHMEY: I don't know how much longer the cross examination of this witness will take.

MR. JOUROLMON: Neither do I.

MR. GWATHMEY: But we have an operating witness here who will be our next witness, and whose testimony will be very short. It is right important that he get back to his duties as quickly as possible.

MR. JOUROLMON: I will be glad to have that interruption.

EXAMINER McGRATH: Do you want to suspend?

MR. JOUROLMON: I will be glad to suspend with Mr. Gaffney and take it on later.

MR. GWATHMEY: I would like to put him on.

EXAMINER McGRATH: We will take a brief recess.

(Short recess.)

(Witness temporarily excused.)

MR. GWATHMEY: Mr. Examiner, just before the recess I believe it was agreed that the further cross examination of Mr. Gaffney would be put off until the conclusion of the testimony

*[65]

*of other witnesses. I am now going to call an operating witness, Mr. Jameson, and I understand from Mr. Jourolmon it will be agreeable to him to complete his cross examination of this witness at this time.

P. L. JAMESON

being first duly sworn, testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Gwathmey) Mr. Jameson, state your name, residence and railroad position?

A. P. L. Jameson, Nashville, Tennessee, inspector of transportation, NC&StL Railway.

Q. How long have you held your present position; and what previous experience have you had in transportation matters?

A. Twenty-five years, thirty-six years altogether, as chief clerk and a trainmaster, general yardmaster, assistant trainmaster and inspector of transportation.

Q. What is the nature and extent of your jurisdiction in your present position?

A. I am the traveling representative of the superintendent of transportation with supervision over all passenger and freight trains, as well as yard operations.

Q. Does your jurisdiction cover the entire line of the NC&StL Railway?

A. Yes sir.

Q. Are your duties such as to require you to spend a very

[66]

con siderable part of your time on the line of railroad?

A. Practically all of my time, yes sir.

Q. That is out on the line?

A. On the line.

Q. In what states does the NC&StL Railway operate, and what is its total mileage, and mileage operated in Tennessee?

A. Kentucky, Tennessee, Alabama, and Georgia, total mileage 1,071.86, and in Tennessee 784.08.

Q. You heard Mr. Gaffney's testimony as to unusual circumstances in connection with the passenger train operations at the present time. Do you wish to add briefly anything to what he said?

A. Yes sir. Due to increased passenger travel about 75 per

cent, approximately 75 per cent of which is military personnel, we have had to operate all of our through trains in two sections. Formerly the consist of these through trains, in addition to the head end cars was two coaches, a dining car, and three sleepers. The consist at the present time is from five to eight coaches, and from four to seven sleepers. This forces us to split the trains up and operate each of our through trains in two sections, that is the mail and express in one section, and passengers on the other. In addition to this expense, we of course have had to increase the personnel at most of our stations, for example, Tullahoma. Formerly we employed a joint freight agent-ticket agent,

*[67]

and three-*operator-ticket sellers. At the present time in addition to the freight agent we have a ticket agent, a ticket accountant, ten ticket sellers, two information clerks, three operators, three baggage agents and six station porters for handling baggage and mail.

Q. Does that situation exist only at Tullahoma, or have you had to increase your forces at various other places on the line?

A. Yes, we have had to increase our forces at all of our larger terminals, Smyrna, Tennessee, all of our cleaning forces at the various terminals, baggage handling forces.

Q. What about your trainmen, have you had to put additional men on trains?

A. We have had to put an additional ticket helper on all of our through trains, and also additional porters to maintain trains in a cleanly condition.

Q. Does the handling of troop trains involve any particular expense to the railroad?

A. Yes, we have had to increase our—double our train dispatching force in Atlanta, Chattanooga, and Bruceton, Tennessee. We have also had to employ numerous operators, opening telegraph offices continually, 24-hour service.

Q. Do you have to give these troop trains precedence over other train movements?

A. We give troop trains precedence over all other freight

*[68]

movements, and certain troop trains precedence over our *passenger trains, yes sir.

Q. Mr. Jameson, does the handling of these troop trains have any effect upon your freight service?

A. Yes, on account of giving troop trains preference, our freight service is badly delayed. We frequently have as many as six to eight troop trains; as I stated before, they are given preference over freight trains.

Q. Is there anything peculiar to the NC&StL Railway about this situation, or do you know that the railroads generally in Tennessee are confronted with similar conditions?

A. Yes sir, I think they all are, there are camps located on most of the railroads, and troop movements are made over all of them.

Q. Are interstate passengers and intrastate passengers in Tennessee handled on the same trains, and do they receive the same service?

A. Yes sir.

Q. And is the same thing true in the case of the other railroads?

A. Yes sir, I think it is.

MR. JOUROLMON: May I ask a clarifying question? Are you testifying now about troop trains?

MR. GWATHMEY: No, no.

THE WITNESS: No.

MR. GWATHMEY: No.

*[69]

*THE WITNESS: Interstate and intrastate passengers.

MR. JOUROLMON: He was testifying about troop trains, and suddenly this other question came in, and I wanted to be sure.

Q. (By Mr. Gwathmey) Do the transportation conditions surrounding the handling of interstate passengers to, from or

through Tennessee differ in any respect from those surrounding the handling of intrastate passengers within the State?

A. They do not, no sir.

Q. Do the transportation conditions surrounding the handling of passengers in the State of Tennessee differ in any material respect from those surrounding the handling of passengers in adjoining states such as Alabama, Kentucky, Georgia, or generally in other parts of the South?

A. No sir.

Q. As a matter of fact, aren't there some rather unusually difficult conditions incident to the movement of passenger trains in Tennessee?

A. Well, on our own railroad, the NC&StL, where we operate through mountainous country, we are required to maintain helper service over the mountain, that some of the other lines do not have.

Q. On account of the topography of this State?

A. And heavy trains, yes sir.

Q. You encounter certain difficulties in operation which are not general throughout the South?

[70]

A. That is right.

Q. Isn't that true?

A. That is right.

MR. GWATHMEY: I think that is all.

EXAMINER McGRATH: Cross examine.

CROSS EXAMINATION

Q. (By Mr. Jourolmon) Mr. Jameson, how long did you say you have been with the NC&StL Railway?

A. I have been with the NC&StL 29 years, 25 in my present position.

Q. In your present position?

A. As inspector of transportation, yes sir.

Q. Has practically all of your experience been with the railroad in this operations division?

A. All of it in the transportation department of the L&N and NC&StL.

Q. You say that due to your increased passenger travel you are now operating trains in two sections?

A. Our through Florida trains, yes sir.

Q. Those are primarily and predominantly interstate trains, are they not?

A. Yes sir.

Q. They carry approximately 95 per cent interstate passengers and about 5 per cent intrastate passengers, is that about right?

[71]

A. I can't answer that.

Q. How much has it increased the cost of transportation to carry the trains in these two sections?

A. Well, in dollars and cents I can't answer. That causes us to have a complete new crew, engineer, fireman and conductor, two brakemen, and an additional control on equipment.

Q. The intrastate service by itself would not require you to operate these trains in two sections, would it?

A. The intrastate?

Q. Yes.

A. Frequently it would, yes sir.

Q. If you had the intrastate service alone, would you have to operate daily two sections between Chicago and Florida?

MR. GWATHMEY: That is a hard question to answer.

MR. JOUROLMON: That answers itself, doesn't it?

MR. GWATHMEY: I don't think that question is very clear.

MR. JOUROLMON: I think it is perfectly clear, and you don't have to answer it, though.

THE WITNESS: I couldn't answer it.

Q. (By Mr. Jourolmon) To what extent does the increase in express and mail carriage contribute to this situation?

A. Well, it doesn't, at the present time none at all, because when we have an increase in mail and express now we are hand-

ling express on freight trains, and frequently United States mail.

*[72]

At the present time we are handling both express *and mail on freight trains.

Q. I understood you now divide your train in two sections, one train which is all passenger and the other train which will have—

A. If it were not for the increased passenger travel we could handle our express and mail on the regular train without any additional expense.

Q. How many cars are in the express and mail service on these trains?

A. Oh, from six to ten. Frequently we handle troop movements on those trains, too; you can't tell.

Q. From six to ten?

A. From six to ten.

Q. If you had no increase of passenger service, how many passenger cars woud you have?

A. We could handle sixteen.

Q. Sixteen passenger cars?

A. Yes, sir, we do it every day.

Q. Then you have ten express cars, and so that would require you to handle 26 on one train?

A. No, formerly, I said formerly.

Q. I am talking about formerly.

A. Yes sir, we could handle all of our passenger business and the mail and express in one section.

Q. I am asking you what your normal train consisted of in

*[73]

*passenger-carrying equipment?

A. Six or seven head-end cars, two coaches, a dining car and three sleepers.

Q. In Tullahoma you have increased your employees, you say. How many employees did you say altogether, 24?

A. How many have we now at the passenger station only?

Q. That's right.

A. We have a ticket agent, a ticket accountant.

Q. Two.

EXAMINER McGRATH: Just the total number.

THE WITNESS: Ten ticket sellers, two information clerks.

Q. (By Mr. Jourolmon) Fourteen?

A. Three operators.

Q. Seventeen?

A. Three baggage agents.

Q. Twenty?

A. Six porters.

Q. Twenty-six. What has occasioned this increased traffic at Tullahoma?

A. The in and outbound movement of military personnel, and persons visiting their boys in the camp.

Q. That is because the United States Government has brought in here to that big concentration boys from every state in the United States as a part of a Federal and National program in order to train them here in the State, is that right?

*[74]

*A. That is correct.

Q. That is not an intrastate situation at all, is it?

A. Well, they sell a great many intrastate tickets.

Q. They sell intrastate tickets to those boys for short side trips, is that right?

A. I suppose so, they sell a great many.

Q. You say your expense has been increased by reason of troop movements?

A. Yes.

Q. How many troop-trains do you have in a month, is that a military secret?

A. No, but I haven't the figures. Mr. Gaffney gave you the figures on those that were handled for two months.

Q. How many of those troop movements have been between points solely within the State of Tennessee?

A. I couldn't answer that.

Q. Have there been any?

A. Yes.

Q. What is the figure? Can I get the figure? I don't recall the figure that is in the record with reference to this, Mr. Gaffney.

MR. GAFFNEY: Yes.

MR. GWATHMEY: Here is the statement right there (indicating), if you want it.

Q. (By Mr. Jourolmon) In the month of August 160 troop

*[75]

trains, and in September 103 troop trains. Were as many as ten of those troop trains confined to movement within the State of Tennessee?

A. I don't know.

Q. How do you know that any of them were confined to a movement within the State of Tennessee?

A. I ride troop trains quite frequently.

Q. What proportion of those 160 troop trains did you ride during the month of August?

A. Well, I can't answer that accurately, I would say I rode at least ten of them.

Q. Where were those ten trains going that you rode?

A. I am not allowed to answer that question.

Q. All right. How many of those troop trains that you rode were between points only in the State of Tennessee?

A. Well, I don't recall because I didn't know those figures were going to be called for here.

Q. Do you recall one troop train of those that you rode which was solely between points in the State of Tennessee?

A. I don't remember.

Q. Do you recall any which were between points from without the State of Tennessee and into and through the State of Tennessee, or into or through—

MR. GWATHMEY: All of them.

THE WITNESS: A good many of them were out of the

State of Tennessee, going to maneuver points in Tennessee from
*[76]
Camp *Forrest.

Q. In other words, to give a straightforward answer on this, Mr. Jamesson, the troop movement which you have talked about is a troop movement that the Government provides for moving these maneuver troops in and out of Tennessee, and bringing them from large distances across the country and into Tullahoma, that is what actually happens in the great majority of cases, is it not?

A. Yes, but we have had a great many troop trains originating in points in Tennessee also going to the maneuver area, and to Camp Forrest.

Q. Sometimes that happens, but that is the exceptional troop train, is it not? You say you don't recall having ridden on any of those?

A. I can't give you the dates, but I could get them.

Q. All right, will you please supply for the record, for the month of August, and for the month of September, all intrastate troop carriage, simply by the number of trains, and also all interstate troop carriage also by the number of trains?

MR. GWATHMEY: One minute. Mr. Examiner, in the first place I don't think it would be proper to submit that information. In the second place, we are not undertaking to show here that the extra expense of handling troop trains is limited to intrastate or interstate business. It applies to both. It is merely one
*[77]
of the additional expenses which the railroads are encountering in their general operations at the present time, and it is mentioned as bearing upon the reasonableness of the charge interstate as well as intrastate.

MR. MILLER: Perhaps—

EXAMINER McGRATH: Just one at a time, now.

MR. MILLER: May I make a suggestion? Perhaps the witness who made the statement with respect to August and Sep-

tember could at least give us the number of those 160 for example in August which were intrastate.

MR. GWATHMEY: My position is that it has no bearing on the case at all, whether they were interstate or intrastate, they are an additional expense that the railroads are subjected to. Furthermore, I don't think we should be expected to go into detail as to the movements of particular troop trains.

MR. MILLER: This is not a detail.

MR. JOUROLMON: I agree with that last statement.

MR. GWATHMEY: In the third place, if counsel want to ask Mr. Gaffney about that when he gets back on the stand, they will have an opportunity to do so.

EXAMINER McGRATH: Will that suit you, Mr. Jourolmon?

MR. JOUROLMON: If I can get the information; I want to get the information from somebody. When I asked Mr. Gaffney a question they said he doesn't have it, somebody else will, and when I asked Mr. Jameson—

EXAMINER McGRATH: Apparently he is going to give us

*[78]

that information.

MR. GWATHMEY: Indeed we are not, unless the Commission orders it. We are not going to give you information about particular troop trains.

MR. JOUROLMON: I said I thoroughly approve of that, Mr. Gwathmey, and I am not going to ask for any information about any particular troop train. I do think we are entitled to information with reference to generalities, as to what is interstate movement and what is intrastate movement.

EXAMINER McGRATH: Apparently this witness is not able to supply it.

MR. GWATHMEY: He is not able to supply specific information. He has testified he knows of his own knowledge that some of these troop trains have been intrastate, and others have been interstate. That is as far as we are prepared to go.

Q. (By Mr. Jourolmon) Your next point is that you have a

terrain here, Mr. Jameson, in Tennessee, which is mountainous. What part of the state are you referring to?

A. The Cumberland Mountains.

EXAMINER McGRATH: Is that the eastern, central or western part of the State?

THE WITNESS: Well, I guess you would call it—

EXAMINER McGRATH: That is what you want to know, isn't it?

*[79]

*MR. JOUROLMON: No, I am interested in knowing, as respects his railroad as to what he refers to.

THE WITNESS: That is at Cowan, Tennessee, that is south of here.

Q. (By Mr. Jourolmon) You are referring to the mountainous section which lies—

A. Between here and Chattanooga.

Q.—between here and Chattanooga?

A. Yes.

Q. That is between Cowan and the state line?

A. Yes sir.

Q. And you say that you have to put helper service on to take care of those trains. What does that consist of?

A. It consists of a mountain engine, an engineer, a fireman and conductor.

Q. What trains are helped by this helper service?

A. Through passenger trains, both mail and express, our through trains.

Q. All through passenger trains?

A. Yes.

Q. By "through passenger trains" you mean a train which has come into Tennessee from the North by way of Nashville and has gone out of Tennessee and into Chattanooga, and then south, or the reverse direction?

A. Yes, and in addition to those, those that start from Nash-

*[80]

*ville.

Q. All right. Now, is it possible for an intrastate passenger to be benefited by that helper service at any point?

A. They would all have to be benefited, or they couldn't get over the mountain.

Q. How would any intrastate passenger get over the mountain, and where would he be going to? Doesn't every passenger that goes over that mountain have to be an interstate passenger?

A. Interstate?

Q. An interstate passenger?

A. No sir.

Q. How are you going to—

A. A passenger from Tullahoma to Sherwood has to go over the mountain, and from Cowan to Sherwood.

Q. Now, which trains stop at Sherwood?

A. Nos. 5 and 6.

Q. Now, that is one of the through trains, Nos. 5 and 6, are those through Florida to Chicago trains?

A. No, 5 and 6 are the local trains.

Q. We are talking now only about your through trains.

A. All right.

Q. Which go from Florida to Chicago?

A. All right.

Q. Now, what intrastate passenger can get on at Tullahoma and get off at Sherwood, on any one of those through trains?

*[81]

*A. Well, an intrastate passenger cannot.

Q. Good. So that helper service which you say is an additional expense is purely interstate service?

EXAMINER McGRATH: Did you answer that last question?

THE WITNESS: No sir, I didn't answer that.

EXAMINER McGRATH: What is your answer?

THE WITNESS: I didn't understand his question.

MR. JOUROLMON: Will you read the question.

(Question read.)

THE WITNESS: Oh, it is inter and intra, both.

Q. (By Mr. Jourolmon) And yet you cannot name any passenger that can ride those trains which have to be carried over the mountain?

A. I can't name any, I can't recall the man's name, but I have seen it happen many a time. This happened back here—if you were at Tullahoma, if your mother was sick at Sherwood, and you boarded the train at Tullahoma he would stop the Dixie Flyer at Tullahoma to let you on, that is done frequently.

Q. By special accommodation you stop the train?

A. Yes sir.

Q. That is the only way that intrastate passengers could benefit, is that right?

A. That happens frequently.

Q. Can you find me in the records of your railroad anytime

[82]

that it has been stopped at Sherwood for an intrastate passenger?

A. For an intrastate passenger?

Q. Yes.

A. Can I find one?

Q. Yes, in all the records of your railroad in the past forty years?

A. Yes sir.

MR. JOUROLMON: If you go back far enough, maybe you could. All right, that is all for this witness.

EXAMINER McGRATH: Are there any further questions on cross examination?

Q. (By Mr. Hendley) Do you use pusher service for trains 5 and 6?

A. Sometimes.

Q. As a general rule?

A. As a general rule Nos. 5 and 6 go over the mountain without the helper, but recently, on account of the heavy movement of draftees and selectees we have to help them over, too.

Q. As a general thing, 5 and 6 do not require pusher service?

A. I would say about three days a week they do, and the balance of the week they don't.

Q. According to your timetable, that is the only train with one exception that could possibly carry an intrastate passenger over the mountain?

A. No sir.

*[83]

*Q. What other?

A. 3 and 4.

Q. 3 and 4?

A. All of them could.

Q. No, they don't. No. 4—

EXAMINER McGRATH: The witness is answering the questions.

THE WITNESS: I said all of them could.

Q. (By Mr. Hendley) How? They could, but they don't.

A. As I stated awhile ago, they do on special occasions, yes sir.

Q. According to your timetable on file, though, they can't carry an intrastate passenger over that mountain except on 5 and 6, with one possible exception, one possible exception, and that is,—

A. 5 and 6 are local trains, and they are supposed to handle those passengers, but we do frequently stop the other trains for their accommodations.

Q. But according to your published timetables, you do not?

A. That is right.

MR. HENDLEY: That is right?

THE WITNESS: Yes sir.

MR. GWATHMEY: They are not scheduled to stop?

THE WITNESS: They are not scheduled to stop there.

MR. HENDLEY: They are not scheduled to stop. There all of that expense is interstate.

*[84]

*MR. GWATHMEY: Now, wait a minute.

MR. JOUROLMON: All right, I think we have gotten the

information on it, and that is the main thing.

EXAMINER McGRATH: Are there any questions on redirect examination?

MR. GWATHMEY: No.

EXAMINER McGRATH: You are excused.

MR. HENDLEY: I have a question.

Q. (By Mr. Hendley) The main object of your testimony is the matter of expense, is that right?

MR. GWATHMEY: Don't answer that question. I will answer if you want to know what the object of his testimony is, counsel will answer it.

MR. HENDLEY: Well, you testified in reference to the matter of expense, did you not? Here is a statement that Mr. Fitzgerald Hall made to the stockholders, published in the 1942 report of the President to the stockholders.

MR. GWATHMEY: Of the NC&StL Railway?

MR. HENDLEY: Of the NC&StL Railway. "The percentage of operating revenue consumed by operating expenses dropped from 71.8 per cent in 1941 to 63.6 per cent in 1942, notwithstanding the fact that payroll increases were over two million dollars."

MR. GWATHMEY: Now, Mr. Examiner, I don't know whether this is a question addressed to the witness or not, but in any event he is not an accountant.

*[85]

*MR. HENDLEY: I want to ask if he agrees with that statement.

MR. GWATHMEY: He is not an accountant, he has nothing to do with the keeping of the records of the company.

EXAMINER McGRATH: What is your answer, briefly, now?

THE WITNESS: Is that a question?

MR. HENDLEY: Yes, it is a question.

MR. GWATHMEY: I object to the question on the ground that this witness has nothing whatever to do with the accounts of the company.

EXAMINER McGRATH: The witness can say that, the witness can answer that.

MR. GWATHMEY: I object to his answering.

MR. HENDLEY: I will ask him this—

MR. GWATHMEY: He can't be called on to answer the questions he doesn't know anything about.

MR. HENDLEY: As a matter of common knowledge, don't you know that the ratio of earnings to operating expenses have so decreased, that it has more than compensated the railroad for all of the additional expense that they have incurred?

THE WITNESS: I don't know, sir.

MR. HENDLEY: You don't know. All right.

EXAMINER McGRATH: Are there any further questions? You are excused.

(Witness excused.)

[86]

MR. GWATHMEY: May it be understood that Mr. Jameson is excused finally?

EXAMINER McGRATH: Well, I understand there are no further questions on cross examination. I asked that question.

MR. JOUROLMON: I have no more questions that I can think of.

MR. GWATHMEY: I think you did very well. All right, Mr. Jameson, thank you.

J. S. TASSIN

being first duly sworn, testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Clark) Mr. Tassin, have you been sworn?

A. I have, yes sir.

Q. Give your name, please, residence and connection with the Southern Railway System Lines?

A. J. S. Tassin, residence Arlington, Virginia, general statistician, Southern Railway System Lines, with headquarters at Washington, D. C.

Q. Will you very briefly tell us your experience with this rail-

road system?

A. I have had forty years' experience with the Southern Railway System, some one or more of the Southern Railway System Lines.

Q. Has that been in the accounting department?

A. All in the accounting department. Prior to 1914 it was in

*[87]

*the general bookkeeping and disbursements departments. Between 1914 and 1932 in connection with the valuation of the railroads, and from 1932 on as general statistician, my present position.

Q. Mr. Tassin, you have just distributed and identified Exhibit No. 6, a 29-page compilation, with the title page. Was that prepared under your direction?

A. Yes sir.

(Exhibit No. 6, Witness Tassin, marked for identification.)

MR. CLARK: Mr. Examiner, we would like the privilege of correcting the title page so as to show Docket No. 29637, and change "North Carolina" to read "Tennessee."

EXAMINER McGRATH: Those corrections have been made.

MR. CLARK: This is an example of having to have green help imported to handle these cases.

Q. (By Mr. Clark) Is that exhibit true and correct to the best of you knowledge and belief, Mr. Tassin?

A. It is.

Q. I appreciate on page 1 you have given what seems to be an index that runs over onto page 2. I take it that is self-explanatory. Perhaps you would prefer to start with the page numbered 1 in the middle at the top of the page.

A. That is Statement No. 1.

Q. Statement No. 1?

A. Page 3.

*[88]

*MR. CLARK: Gentlemen, if you will turn to page 3 of the

exhibit you will find it marked "No 1," and the witness, as he proceeds, will refer to these numerals at the top of each page in the middle. That will help you identify the exhibit or the page of the exhibit that he is talking about.

Q. (By Mr. Clark) Do you understand that, Mr. Tassin?

A. Yes.

Q. That will help them follow it?

A. Yes.

Q. Will you explain to us the data that you have compiled in this Exhibit No. 6?

A. I shall refer to both the statement number and page number so as to absolutely identify it.

Q. All right.

A. Statement No. 1, page 3, is a statement of loss in intrastate revenue for certain specific periods. The last column covers, with the exception of a single railroad, the loss for the ten months period ending September 30th, 1943, that is beginning with December 1st, 1942, and that shows that in that period the roads have lost revenue to the extent of $452,915 by reason of the interstate rates not being made applicable intrastate in Tennessee.

Q. Will you tell us how you arrive at those several totals for these several individual railroads?

A. As the statement shows at the bottom, the source of the

*[89]

*information is the audit departments of the several railroads. Now, there is a note there opposite the NC&StL Railway which shows that their information, the loss of $181,511 is for nine months, and not ten months. If we had the additional month figured it would presumably raise that total by about $17,000, or something like that.

The middle column gives a twelve-months period beginning with October 1, 1942, and ending with September 30th, 1943. The loss over that period is $556,280. Here the NC&StL is a twelve-months figure, but it begins with August and ends a month earlier.

Q. What is the significance now of stating that in that twelve-months period?

A. Well, the interstate increase was allowed, as I understand it, on October 1, 1942, and if the intrastate had gone into effect at that same date, we would be this much better off.

EXAMINER McGRATH: Which much?

THE WITNESS: The middle figure.

Q. (By Mr. Clark) On a twelve-months basis?

A. On a twelve-months basis, and that is had it been possible to put the intrastate rates in effect at the same time that the interstate rates went into effect.

Q. Explain the first column.

A. The first column takes the earliest twelve-months period that was available, beginning when the 10 per cent increase

*[90]

*generally went into effect, sometime about February 10th, 1942, as I recall it, so you could not consider the month of February because it was only a part of a month. So I began with February 28th or March 1st, 1942, and ended with the period of February, 1943. I did that to get an early twelve-months period, and the result was $424,040, the purpose being to show that this loss is increasing as the time goes along.

Q. Turn to Statement 2.

A. Statement 2 is on page 4. Before passing to the subsequent statements in this exhibit, I wish to make this general explanation: That Statement No. 1 shows the main thing I have been asked to prove here, and that is the proof of actual loss. The other figures are for the purpose of giving a rounded picture of passenger operations, and they have grown out of our experience in the various state cases, showing the questions that have been asked and the general character of statistical information found desirable in order to present a well rounded picture.

Now, Statement No. 2 takes cognizance of the fact that normally the railroads of the United States, not only of the Southern Region, and not only with respect to those roads specifically

serving the State of Tennessee, but the railroads generally incur a deficit from their passenger operations.

Beginning with 1936 it will be observed that everyone of these

*[91]

railroads in every year through 1941, passenger showed *sizeable deficits. Even in 1942 there are four roads that still show a deficit. This prefix "I" applies to the year 1942 and indicates those roads that had an income from their passenger traffic in 1942.

Q. Four still have a deficit?

A. Four still have a deficit.

Q. Let me ask you this question, doesn't Statement No. 2 show that it would take nine years to wipe out the accumulated deficit from 1936 through 1942?

A. It does, that is assuming nine years as good as 1942.

Q. That is right.

A. That many years would have to pass before this average column would be wiped out.

Q. I think you can pass to Statement No. 3, now.

A. No. 3 shows that the railroads are chronically in need of additional revenue. Not only is this true of passanger, but of their combined operations of freight as well as passengers.

Q. This is for the Southern Region as a whole?

A. This is for the Southern Region.

Q. All right.

A. It shows the rate of return for the class I roads of the Southern Region over a 22-year period, from 1921 through 1942.

Q. Then you average the two periods?

*[92]

A. We show in the second to the last column the rate of *return. If we take the average of the years 1921 to 1930, these roads averaged 4.2 per cent on their investment. If we take the years 1931 through 1942 it dropped to 2.48 on their investment. Taking the entire 22-year period the average return on investment has been 3.21 per cent, showing a chronic need of additional revenue.

Q. Those "D"s obviously mean "deficit"?

A. They indicate deficit.

Q. Now, let's turn to Statement 4.

A. Statement 4 on page 6.

Q. Now, you tie it to the individual railroads?

A. I am tying it to the individual railroads serving the State of Tennessee, and covering the 22-year period where they earned 3.25, in comparison with 3.23 for the Southern Region as a whole.

Q. Now, in your middle column headed "Net Railway Operating Income," there your figures are determined through taxes?

A. Yes.

Q. That is rents and taxes?

A. After payment of rents and taxes.

Q. And that is a standard, well-known figure?

A. That is as prescribed by the Interstate Commerce Commission. Incidentally, I should say that where I have given statistics for 1936 on, it is because 1936 was the first year in which the

*[93]

Interstate Commerce Commission required a separation of *the net income or loss from passenger operations.

Q. Now, of course, we all know that the Commission has prescribed a formula?

A. Yes.

Q. For separating freight and passenger?

A. That is true.

Q. You have, of course, observed that, is that true?

A. That is true, and the figures as furnished are reported to the Interstate Commerce Commission under their rules and regulations.

Q. Let's turn over to Sheet 5.

EXAMINER McGRATH: Statement 5.

THE WITNESS: Statement 5.

Q. (By Mr. Clark) Yes, statement 5.

A. Page 7.

Q. There you have given consideration to the operation of the several roads individually within the state?

A. As compared with the entire line.

Q. That is right.

A. I have given each road's return a weight in proportion to its mileage operated as a whole, and within the state, the result being that as a whole the average is a return of 3.36, and within the state 3.39.

MR. JOUROLMON: Mr. Examiner, I don't know what is coming in all of these pages, of course, but so far we have had

*[94]

*these average rates of return over an entire 21-year period, and I wish to object to these exhibits on the ground that they are immaterial for any purpose, incompetent and irrelevant, because of the fact that they are such an average and do not reflect the present existing conditions, which is the proper criterion, for determining the rates under practically all of the decisions of the United States Supreme Court, presently and not the past, which determines.

MR. MILLER: I would like to join in that objection.

MR. CLARK: Do you want to hear from me?

EXAMINER McGRATH: Yes.

MR. CLARK: Mr. Examiner, we have shown the figures, for instance, for 1942, the current year, and if the gentlemen do not like to examine those for the preceding period, I suggest they shut their eyes to them. We think they are pertinent, because to take one year out of a series of years for the operation of several railroads would be very misleading. It is hardly fair to say that 1942, or the present year of 1943 are typical years of operation for any of these railroads in any respect. Indeed, the country as a whole is at war, and it would be rather absurd to tie ourselves to one year.

MR. JOUROLMON: Mr. Examiner, I don't want to burden this point particularly, or labor it, it seems to me this is a very simple legal point, and that any number of decisions of the Inter-

*[95]

state Commerce Commission and of the Supreme Court of *the United States, and practically all jurisdictions, it has been decided that carriers and other public utilities may not recoup

losses of past years by rates which are too high under present conditions. I know that that has been held over and over. For that reason it seems to me this entire line of exhibits reflecting just those things that they have offered so far are incompetent, irrelevant and immaterial.

MR. MILLER: May I make a further statement, not duplicating his at all?

EXAMINER McGRATH: Yes.

MR. MILLER: I wish to point out that the issue in this case is whether at the present time the intrastate rate is a burden on interstate commerce, and not what was happening a way back in 1921.

EXAMINER McGRATH: The Examiner's ruling is that the exhibit will be received subject to the objection.

MR. JOUROLMON: Thank you, sir.

Q. (By Mr. Clark) Will you proceed with Statement No. 5?

A. We had finished with No. 5.

Q. Did you sufficiently explain that?

A. Yes.

Q. Let's go over to No. 6, then. Here is one that comes right to Mr. Jourolmon's point. It deals with 1942, and I hope he will examine it closely.

A. Statement No. 6, page 8. This, of course, refers again to

*[96]

*the average year of 1922, 1921-42, but please let me ask you to refer back to Statement No. 3, page 5, where the information is shown for the Southern Region by years, by individual years, and the result at the bottom is strikingly close to the figures for the individual lines involved in Tennessee. That was my reason for not making a statement similar to No. 3 for each one of these succeeding statements. The close relationship is so obvious that it seemed unnecessary.

Q. Call attention to those figures, so we might clear them up; point out the similarities you have in mind.

A. For example, turn to Statement No. 3, page 5. There the rate of return by each individual year—

Q. All right.

A. I show at the bottom that for the entire period of 22 years, the roads in the Southern Region as a whole, that is the Class I roads, earned 3.23 per cent on their investment. The next statement, No. 4, shows for those roads operating in Tennessee that they earned 3.45. In both cases it is under 3½ per cent.

On Statement No. 5, page 7, when we weight with respect to the mileage of these roads, you get 3.36 for the entire lines, and 3.39 as weighted by the mileage in Tennessee. Now, these relations are so close that it seemed unnecessary to multiply all of this detail and that was my reason for not doing it.

Q. You made reference to that on Statement No. 6?

*[97]

*A. Statement No. 5, on page 7, was the last reference I intended to make.

Q. That is what I was trying to get at. You referred to it as No. 6. Did you mean to say No. 5?

A. I was looking at No. 5, page 7.

MR. JOUROLMON: I am thoroughly mixed up by now.

Q. (By Mr. Clark) Let's start on No. 6.

A. No. 6. Now having found that the roads are chronically in need of additional revenue, that is they earned less than 5-3/4 per cent return on their investment, the question necessarily arises by how much would their revenue have had to be increased to enable them to realize a 5-3/4 per cent return on the investment. Statement No. 6, page 8, gives the answer.

For the lines as a whole their revenues would have had to have been increased by 12 per cent, and in the State of Tennessee by 10 per cent, to give them a 5-3/4 per cent return on their investment.

EXAMINER McGRATH: During what period?

THE WITNESS: During the 22-year period, 1921-42.

MR. JOUROLMON: This is subject, I think, to the same objection.

EXAMINER McGRATH: The same ruling.

THE WITNESS: These ratios, of course, are weighted in proportion to miles. Are you prepared to pass to the next?

Q. (By Mr. Clark) Yes sir, go ahead to No. 7.

*[98]

*A. Statement No. 7 on page 9 shows that the basis of measurement of fair return used consistently by the railroads is a conservative basis to use. That is, we use investment in railway property devoted to transportation service as annually returned to the Interstate Commerce Commission in Schedule 211-N of the Annual Reports to the Commission, plus the amount of cash and material and supplies on hand. That is our ordinary basis for measuring our rate of return and the extent of our revenue need. Now, that is a conservative basis, certainly for Southern Railway System Lines, and I can also state for Southern Region lines as a whole. Because of my long experience in valuation work, I don't hesitate to testify to that as a fact.

Now, we have a means of testing that. In Ex Parte 148 there was introduced at the instance of Commissioner Aitchison an exhibit known as A-11, which, as of January 1, 1940, that is based on the figures for the year 1939, shows for the roads generally, including the roads that I have excerpted here, what the Commission calls "Original cost to date," and which I here refer to in the first column as Basis A, production cost. That is what is called in Exhibit A-11 original cost to date. Basis B on this statement, reproduction estimate, is what Exhibit A-11 refers to as cost of reproduction new.

Then the Exhibit A-11 furnishes a current appraisal of lands and of working capital. Now, the capital outlay columns to the

*[99]

extreme right are obtained by adding lands and working capitals to basis A and basis B on the lefthand of the statement, in other words, the last two columns, including lands and working capital and the first two columns shown.

Now, these are the latest figures put out by the Bureau of Valuation of the Interstate Commerce Commission and they show on the basis of their own comparison that to reproduce these properties would require 13 per cent more money than they show was required to produce them.

Of course, the railroads do not accept these figures as complete or adequate. The column referred to as "Original cost to date" is in fact made up of three separate and distinct kinds of figures. There is a certain undetermined amount in there, that is both original cost and cost to date, that is the property in existence was still of the same general nature and character as when originally produced, so the two costs, original cost and cost to date, coincide.

There is a larger sum of figures where the statement includes original cost, but not cost to date. There is a still larger sum of figures included in there which is neither original cost nor cost to date, being the Commission's reproduction estimate as of the 1910-14 level of prices, part new and part secondhand, undetermined.

Neither do the carriers accept the Commission's appraisal of these lands, which was based upon an assumed value of adjoining

*[100]

and adjacent lands, and give no consideration to *severance damages and excess costs that the railroads have to pay in acquiring their lands. But even on this restricted basis, we see that these public servants could not be acquired today for the amount of money that they actually were acquired for.

Now, look at line 19. Here we take the reproduction estimate as of January 1, 1940, and on line 20 add the current land appraisal, because land is not separable in schedule 211-N. These two figures added together give us the sum shown there of $2,931,347,451, whereas what these carriers returned in 211-N, not including cash or material and supplies, is $2,632,392,818.

EXAMINER McGRATH: Does that amount represent what is known as the "Book Value"?

THE WITNESS: Yes.

MR. CLARK: That is right.

THE WITNESS: It is regularly the figure returned to the Commission in Schedule 211-N of the report. It is book value of property devoted to transportation service.

Q. (By Mr. Clark) Mr. Tassin, let's sum up this exhibit by pointing out that your book value that you have referred to is three hundred million dollars less than the value that the Commission shows in Exhibit A-11?

A. And which is incomplete.

Q. That is the point of the exhibit?

[101]

A. That is the point of the exhibit, to show that we are using a conservative basis of measurement.

MR. JOUROLMON: Mr. Examiner, I wish to make an objection to the reproduction cost evidence which has been incorporated in this testimony on the ground that all reproduction cost is speculative, conjectural, and has no probative value for any purpose in any court of record.

EXAMINER McGRATH: The objection is noted.

Q. (By Mr. Clark) Please take up Statement No. 8, Mr. Tassin.

A. Now, while the purpose of this proceeding has been stated by our traffic witnesses, if the increase sought is granted, there will flow certain collateral benefits, and these ensuing statements are intended to develop that. For example, take Statement 8, page 10.

You will see that over the seven years here averaged, the freight operating ratio has been 63, and the passenger operating 110. On the average, we are spending more than a dollar in passenger service to earn a dollar of revenue. Now, any improvement in passenger revenues will help to reduce that disparity in ratios, operating ratios.

Statement No. 9, page 11, carries this comparison a step further. The operating ratio is obtained by dividing operating

revenues into operating expenses. This statement gives what I call an outgoing ratio, because it adds to expenses, taxes and rents before dividing by revenues.

*[102]

*Q. In other words, here you figure on basis of the so-called net railway operating income?

A. Yes, up to that level.

Q. I think it is self-explanatory.

A. And here where freight shows an operating ratio of 74, passenger shows a ratio of 126. We are spending an added 26 cents to earn a dollar of revenue in passenger services, so that passenger is very definitely a burden upon freight.

Now, Statement No. 10, page 12. Look at line 20, and look at the first five figures. It will be observed that passenger carrying cars, popularly known as the "Rear End Cars" earned in the neighborhood of 15 or 16 cents per mile very consistently during those first five years.

In 1941, the earnings jumped up to 20 cents a mile and in 1942 to 38 cents a mile, the average being 20 cents a mile well above the average for the first five years. Now, that is the earnings per mile of your passenger carriage or rear end cars.

Q. Let's make that simple. That includes your coaches and your sleepers and your parlor cars and your dining cars?

A. All cars.

Q. Cars carrying passengers?

A. All provided for the convenience of passengers.

Q. Now, we are beginning to narrow that down on the next exhibit.

*[103]

*A. The next statement, No. 11, on page 13, gives a comparison for the head end cars, baggage cars, mail, express and milk, which carry no passengers.

Q. Which are not included in Statement 10?

A. That is right.

Q. Yes sir.

A. And here there is the less phenomenal jump in 1941 and

1942. The statement runs pretty consistently all the way through, showing that these head end cars which do not represent the investment of the rear end cars and do not require as much cost in the way of cleaning and supplying as the rear end cars, nevertheless produced on the average 5 cents per car mile additional revenue, more revenue, so that the trouble with passenger is in passenger fares, rather than in respect to the earnings derived from mail, express and so forth.

Q. Now, No. 12, here is where you break down Exhibit No. 10?

A. That is right. Statement No. 12, page 14. Here we show the average earnings per passenger per mile in coaches only, other than commutation. There is no commutation service in this statement. The average is 1.594. Of course, some of these roads, as has already been explained, have been using the 2.2 rate where others have been using the 1.65, but the general average is 1.594 per passenger mile in coaches only.

Q. Can you recall which those roads are, Mr. Tassin?

A. The Frisco, Illinois Central, GM&O.

*[104]

*Q. Wait a minute. The Frisco, is it?

A. Frisco.

Q. That is the same as the "St.L&SF"?

A. Yes.

Q. IC?

A. IC.

Q. GM&O?

A. GM&O. Those roads have some 1.65 rates for competitive purposes, as has been explained.

Q. I see.

A. I would like to refer on the statement No. 12, page 14, to line 10, where the Illinois Central earned on an average 1.699; to line 13, where the St. Louis-San Francisco earned on the average 1.873; to line 9 which is the GM&O, where they earned 1.673. You see the effect of that 2.2 rate on the roads that used it.

Q. All of the other lines, without having to name them, are less?

A. Yes.

EXAMINER McGRATH: We will recess now until 1:30.

(Whereupon, at 12:30 o'clock, p. m., a recess was taken until 1:30 o'clock p. m.)

*[105]

*AFTERNOON SESSION

The hearing was resumed pursuant to recess.

1:30 P. M.

EXAMINER McGRATH: The hearing will be resumed, gentlemen.

J. S. TASSIN

the witness on the stand at the time of recess, resumed the stand and testified further as follows:

DIRECT EXAMINATION

Q. (By Mr. Clark) Let's take up No. 13, Mr. Tassin.

A. Statement No. 13 on page 15 gives the revenue per passenger mile in sleeping cars, 2.366.

Q. Now, that means, let's see if we get it right, one passenger, one mile.

A. Yes.

Q. In that class of equipment?

A. Yes.

Q. That is exclusive of coaches?

A. That excludes coaches, the coaches are on the preceding page.

Q. That is right.

A. 1.594.

Q. Otherwise it is gotten up identically like No. 12?

A. That is right.

Q. All right, sir.

A. No. 14 on page 16 is the revenue per coach mile. The

*[106]
*previous figure you will recall was for passenger carrying in car miles.

Q. That's right.

A. This is limited to the coach mile.

Q. This is the coach as a unit?

A. As a unit.

Q. Without any sleeping or chair car?

A. That is right.

Q. But the coach as a unit?

A. Yes.

Q. All right.

A. About 1937 to 1940 it was around 19 or 20 cents per coach mile. It jumped to 27 cents in 1941 and 38 cents in 1942, the average for the six year period being 27 cents per coach mile, revenue produced by a coach.

Q. I believe 15 is the same thing.

A. 15 is the same thing for the sleeping and parlor car miles, statement 15 on page 17.

Q. All right, sir.

A. It shows that the revenues were running around 20 or 21 cents a mile through 1940 and jumped to 25 cents in 1941, to 47 cents in 1942, with an average of 27 cents per sleeping or parlor car mile for the six year period.

Q. All right, No. 16.

A. Statement No. 16 on page 18, takes the total railway tax

*[107]

*accruals account, No. 532. It takes the year 1936 as the basis of comparison, the index number 100, and shows that in 1941, for example, the tax burden had increased by over 100 per cent, 108 per cent, to be specific. In 1942 it increased by 329 per cent. It shows the increasing tax burden.

Q. What taxes are included?

A. All taxes are included.

Q. Total taxes?

A. Total taxes.

Q. Statement No. 17 is what?

A. Statement No. 17 shows the same figures, but deals only with that portion of the tax burden which under the Commission's rules is separated against passenger service.

Q. You mean the Interstate Commerce Commission?

A. The Interstate Commerce Commission. Now, you will observe there that the increased tax burden on passenger service in 1941 over 1936 was only 26 per cent, but in 1942 it was 231 per cent.

Q. All right, sir. No. 18.

A. Statement 18 on page 20 shows the increase in the general rate of compensation. It is not the increase in labor costs, but increase in rate of compensation. Taking 1936 as 100, there is a more or less constant increase year by year, in 1941 it jumped up by 16 per cent and in 1942 by 25, the average being 11 per cent.

*[108]

*Q. The distinction you pointed out was this is hourly compensation, not total compensation?

A. Not total compensation. The increased rate of pay is measured by the hour of service.

Q. All right.

A. Statement No. 19 on page 21, using the October 1, 1936, date as a basis of comparison, the index number 100, shows that taking year 1943, the last column to the right, the increased price in material and supplies is shown. This is not volume again, but the increased cost per unit of 20 per cent.

Q. All right, No. 20.

A. No. 20 goes back to the last war and takes the five year period 1916 to 1920, inclusive, and shows during those years these particular roads carried about 68 passengers per train. That is the per train figure.

Q. That is in all classes of equipment, coaches and Pullmans?

A. Yes, the average number of passengers on a train was 68.

MR. JOUROLMON: Mr. Examiner, I don't know the purpose of this exhibit. It seems to be rather remote in time, and until

I know the purpose of it I am going to make an objection in order to reserve it.

MR. CLARK: The next exhibit brings it out.

THE WITNESS: Yes, the purpose is to show—

MR. CLARK: Wait a minute. You don't have to explain the purpose of the exhibit. You offered it.

*[109]

*THE WITNESS: Well, it will speak for itself.

MR. CLARK: All right.

Q. (By Mr. Clark) Now, your next statement, No. 21.

A. The next statement, No. 21 on page 23, takes the ensuing ten years, 1921 through 1930, where the trains averaged 49 passengers, showing a considerable drop from the first period.

MR. JOUROLMON: I make an objection as to page 21 or statement 21, page 23.

EXAMINER McGRATH: The objection is noted.

THE WITNESS: Statement 21 on page 23 I have just explained.

Q. By Mr. Clark) You have statement 22 on page 24.

A. Statement 22 on page 24 takes the next ten years, 1931 through 1940.

Q. All right.

A. With a drop to 37 passengers per train.

MR. JOUROLMON: I make the same objection, I think it is applicable to that too.

EXAMINER McGRATH: The same ruling.

Q. (By Mr. Clark) All right, your next statement.

A. Statement 23 on page 25 shows that in the year 1941 the number of passengers per train had jumped to 62 and in 1942 to 120, and in the first eight months of 1943 to 189. Those are passengers per train.

Q. Are you talking about statement 22?

A. Statement 23.

*[110]

*Q. You have got revenue passengers per train mile here.

A. Yes, that is right, passenger miles per train mile, revenue

passenger miles per train mile; the number of passengers on the train for the average mile.

Q. I see. All right. You are still following the same method?

A. Still following the same method, that is using the train as the unit of comparison. Now, we pass to the car as the unit of comparison. Statement 24 on page 26. Here the average car, passenger car, averaged 18 passengers in the five year period 1916 to 1920. Statement 25 on the ensuing page shows a drop to 12 passengers for the period between 1921 and 1930.

Q. Right there, that is coaches and pullmans or just coaches?

A. No, that is coaches and pullmans, that is passenger carrying car miles, any car available for use of passengers.

Q. For statements 24 and 25?

A. And also for 26.

MR. JOUROLMON: The same objection for each of these three pages.

EXAMINER McGRATH: The objection is noted.

A. That shows a drop to 9 passengers per car in the period 1931 to 1940. Statement 27 on page 29 shows that in 1941 the average was 14 passengers per car, in 1942 it was 22 passengers per car, and for the first 8 months of 1943 it was 31 passengers per car.

Now, we pass from the rear end cars in general, all passenger

*[111]

*carrying cars, to the coach in particular, Statement No. 28 on page 30 shows from 1937 to 1942, inclusive, the only period for which this information is available, an average of 17 passengers per coach, and statement 29 on the ensuing page shows an average of 12 passengers per Pullman car. That concludes the exhibit.

Q. (By Mr. Clark) Now, Mr. Tassin, of course we all recognize you have been using total figures, and not decimals,

A. Yes, the round figures. It is hard to split a passenger.

Q. In several places you have referred to the T. A. & G. as being excluded, in other words it is shown with or without them.

A. Yes.

Q. Does the exhibit make that clear why you did that?

A. The reason for that was because in a good many cases we were unable to get the T. A. & G. statistics. We used them when they were available, and showed the effect of including or excluding it and it is very slight upon the total, the effect of either including or excluding the T. A. & G.

Q. The T. A. & G., has it relatively very small mileage in the State of Tennessee? Which is the exhibit on that?

A. The mileage will be shown on Statement No. 5. It has only 3 miles in the State of Tennessee out of a total of 95 miles.

Q. That is what I thought, it is relatively unimportant.

*[112].

A. If you will refer to Statement No. 1, it reported no losses so it has practically no business in Tennessee for those 3 miles.

Q. Passenger business?

A. Passenger business.

MR. JOUROLMON: Isn't that 8 miles instead of 3?

THE WITNESS: Yes, it should be 8 miles instead of 3.

Q. (By Mr. Clark) What page are you talking about if you are going to correct that statement?

A. Statement No. 5, page 7. I referred to the mileage of the T. A. & G. as 3. It is 7.85, or in round figures 8 miles.

MR. JOUROLMON: You got the wrong column.

THE WITNESS: Yes. But as I have said, they show no losses for those 8 miles, indicating no intrastate business.

Q. (By Mr. Clark) Which figure do you want to change?

A. There is no figure to be changed, I merely referred to the wrong figure, I referred to the wrong column.

Q. It is on Exhibit 8?

A. It is on Exhibit 5.

Q. Isn't it on Exhibit 6?

A. It is also on Exhibit 6, I think. Yes, it is shown in round figures on Exhibit 6 as 8 miles.

EXAMINER McGRATH: You mean Statement 6?

THE WITNESS: Statement.

EXAMINER McGRATH: Of Exhibit 6.

THE WITNESS: Statement 6, page 8, Exhibit No. 6.

*[113]

*Q. (By Mr. Clark) What I am trying to straighten out is one is 8 and the other is 7.85.

A. Yes, in the ensuing page we used the round figure.

Q. That is the same figure?

A. That is the same figure.

Q. Of course we understand you are the general statistician for the Southern Railway System Lines, C.N.O.&T.P., A.G.S., and other system lines. Throughout the exhibit you have included statistical data on behalf of other railroads in Tennessee. Was that furnished you by the responsible accounting offices of those railroads?

A. For statement No. 1 only. All of the other statistics were available to me through reports of the Interstate Commerce Commission.

Q. And so on statement No. 1 you have used the data that the railroads furnished?

A. Yes, sir.

MR. CLARK: Mr. Examiner, may I say that we have here Mr. Kennedy from the accounting department of the L. & N. Railroad, Mr. Peer from the accounting department of the G. M. & O., Mr. Sharpe from the Illinois Central System Lines, Mr. Hopkins is here from the N. C. & St. L. I believe that covers the lines for whom you have furnished data?

THE WITNESS: Yes.

MR. CLARK: We appreciate that Mr. Tassin did not keep

*[114]

*those records, but is is only fair to explain to you where he got the data, and to say those gentlemen are here. These gentlemen can be questioned about any phase of it that the Examiner or the opposing counsel may wish.

Q. (By Mr. Clark) Mr. Tassin, have you any other statement that I have overlooked asking you about?

A. No.

Q. This one exhibit is all you have to offer?

A. Just the one exhibit.

Q. Have you any further statement in connection with the exhibit?

A. No.

MR. CLARK: If the Examiner please, we offer Exhibit No. 6 on behalf of the Respondent roads.

MR. MILLER: Mr. Examiner, may I request that the ruling as to the admissibility be delayed until after cross examination?

EXAMINER McGRATH: It will be deferred.

MR. CLARK: Cross examine.

MR. JOUROLMON: Mr. Examiner, I am going to reserve my cross examination until after that of Mr. Miller, of the O. P. A., if that is satisfactory.

CROSS EXAMINATION

Q. (By Mr. Miller) Mr. Tassin, suppose we start with No. 1, and in that connection I want to refer to statements Nos. 16 and 17, showing the past accruals. First, why or generally *speaking what is the principal reason for this increase, tremendous increase in railway tax accruals in 1942?

*[115]

A. Increased rates of taxation to raise the money to run the war.

Q. Is that largely excess profits taxes?

A. With respect to certain of the roads, yes.

Q. Would you say that was the principal reason for the increase?

A. For the high increase in 1942, yes.

Q. Correct, yes. Well, now, you see that on Statement No. 1 where you give certain estimates of the alleged loss of intrastate revenue, if the Tennessee Railroads had had the benefit of that loss, how much of that would have gone into excess profits tax, generally speaking?

A. Well, as to roads that are in the surtaxable group, 80 per cent roughly would have been turned over to the government. We have to earn a dollar to keep twenty cents. That is the fate of business generally these days.

Q. Are you able to name those particular railroads on statement No. 1 which are in that excess profits bracket?

A. I had not checked that and cannot identify them. I know that the Southern Railway is.

Q. What about the I. C.?

A. I can't answer for the I. C. They have a representative here.

*[116]

*Q. In other words, you don't know any except the Southern Railway System, is that right?

A. That's right, I have no knowledge as to that fact. It could be ascertained from their reports, but I have not checked it.

Q. Now turn to statement No. 2. I notice in line 19 you say it will take 9 years to wipe out that deficit shown in line 18, the revenue status as of 1942. That leads me to wonder why you offered that, why this statement is offered. Can you explain why it is you think you are justified in 9 years of 1942 revenue?

A. No, it is not for that purpose. The statement is offered to show the impropriety of reaching conclusions by considering that year only. You cannot consider 1942, the highest year on record, without considering 1932, the lowest year on record, and the period in between. We must have the normal experience of these roads over a number of years in order to reach a reasonable conclusion.

Q. Well, now, I don't quite understand. Do you mean that the Tennessee railroads are claiming that they are entitled to this increase in intrastate fares to recoup for these 9 years?

A. No, we make no such claim.

Q. Then what is the purpose of the exhibit?

A. The purpose of the exhibit is to show the folly of restricting

*[117]

your consideration to a single year, good or bad. You must *take

the normal experience of the railroads over a number of years. You cannot change your rates and fares every year; our tariffs are not equipped with thermostats.

Q. Now, do you expect to have deficits during the war?

A. No, and we do not expect people to be kicking about that if we are not privileged to kick for the deficit in the other years.

MR. CLARK: The cross examination is largely argumentative.

EXAMINER McGRATH: I am inclined to agree with you.

MR. CLARK: It seems to me the purpose of the exhibit is a matter for discussion in the brief.

EXAMINER McGRATH: It has been fully covered, it seems to me, so far.

MR. CLARK: I hope the balance of the cross examination will bear that in mind.

MR. MILLER: Mr. Examiner, I do think it is entirely relevant to try and find out what the purpose of this exhibit is.

EXAMINER McGRATH: I do not intend to interfere with your doing that.

MR. MILLER: I don't intend to make any lengthy cross examination, I never have, and I do not intend to waste it.

EXAMINER McGRATH: Proceed.

Q. (By Mr. Miller) Turn to statement No. 3. In that first column of dollar figures, can you explain what enters into your investment in railway property?

*[118]

*A. That is the investment in railway property used in transportation service as annually reported to the Interstate Commerce Commission since 1936 in Schedule 211-N of the annual report to the Commission, the previous years being constructed on the same basis. The note, reference A, shows it includes an allowance for working capital, which is the sum total of cash and materials and supplies on hand at the close of each year. That is the basis the carriers have consistently used for measuring their rate of return and indicated revenue needs.

Q. Is that first dollar figure on the next sheet, statement No. 4, compiled in the same way?

A. It is general operating revenues annually reported to the Interstate Commerce Commission.

EXAMINER McGRATH: Just answer that question simply.

THE WITNESS: I can't answer it simply, because it is not compiled in the same way.

Q. (By Mr. Miller) Statement No. 4, next page.

A. Yes.

Q. Does this investment figure have any deductions for depreciation?

A. No.

Q. You have calculated the rate of return on that basis. How do you justify the calculation prior to deductions for depreciation?

*[119]

*A. Depreciation is an element of cost and you would be short in your cost if you deducted depreciation.

Q. Now, then, you have also shown net railway operating income on that exhibit after deduction of taxes, isn't that correct?

A. That is right.

Q. How do you justify that in your calculation of rate of return?

A. We can't turn the money over to the government unless we earn it.

Q. Well, do you count that as an expense?

A. Why, certainly, we would be paying it out of our own pocket if we didn't get recompense for it.

Q. Do I understand that that figure, net railway operating income, is also after deduction of rents?

A. Yes, it is the prescribed figure by the rules of the Commission.

Q. What kind of rents are those?

A. Operating rents, equipment and joint facility rents.

Q. Statement No. 6, you have figured the weighted basis as I understand it on a return of 5 3/4 per cent, is that correct?

A. Yes.

Q. Why did you use 5 3/4 per cent?

A. Well, because on an historical basis my investigation shows

*[120]

that that is a fair average rate, and it is the rate that is *uniformly used, which has been used for a number of years, but I have looked into it and found that it is a fair average interest compensation to figure on.

Q. Now, on statement No. 7, those bases A and B, for your other data with respect to value of railroad property, is that before or after deduction of depreciation?

A. Before deduction of depreciation.

Q. In other words it did not include depreciation?

A. No, for the same reason. I am dealing with costs.

Q. Are those the only elements of value submitted to the Commission in Ex Parte 148?

A. Yes, that is the only—well, of course, the carriers put in data similar to that statement No. 3. Again I don't call them value comparisons, but cost comparisons.

Q. On statement No. 24 you have some figures relating to revenue passenger miles per car miles. Is that based on cars such as diners and deadheaded cars, and so forth?

A. Yes, sir, the car miles include the total passenger carrying car miles.

Q. How about empty cars, deadheaded cars?

A. Yes, empty cars are in there because they are not separated in the statistical reports to the Commission.

MR. MILLER: That is all on cross examination that I have, but if I may, while the matter is fresh in your memory, Mr.

*[121]

Examiner, I would like to make my objection to the exhibit *based on that cross examination. I want to object to statements 3, 4, and 7 on the grounds that they are improperly calculated for these reasons: In Ex Parte 148, first decision, the Commission cited a prior decision, Reduced Rates 1922, in which it said "Railway corporations, like other corporations, should pay their Fed-

eral income tax out of income rather than collect it in effect from the public in the form of transportation charges adjusted to enable them to retain the same amount of money that was returned over and above the taxes."

Also I wish to object to those exhibits because the depreciation is not reduced from the base. The Commission in "Charges for Protective Service to Perishable Freight," 215 I.C.C. 684, said that that should be done, and cited a number of Supreme Court cases to that effect, and the Commission says this: "The Supreme Court has repeatedly held that in order to determine the present value deductions must be made for accrued depreciation."

MR. CLARK: Will you give me that citation, 215 what?

MR. MILLER: 215 I.C.C. 684, and I quote from page 692.

MR. CLARK: Did you cite another one?

MR. MILLER: The first report in Ex Parte 148.

MR. CLARK: Do you want to hear from me?

EXAMINER McGRATH: I don't think so. As to your first objection, that in respect to the inclusion of taxes, that objection

*[122]

is overruled. The other objection will be noted. *Are there any further questions on cross examination?

MR. JOUROLMON: Yes, if you please.

Q. (By Mr. Jourolmon) Mr. Tassin, your exhibit on page No. 7 and statement No. 5 shows that the Alabama Great Southern Railway has 9.61 miles of line in Tennessee?

A. Yes.

Q. Does the Alabama Great Southern Railway have any intrastate service in Tennessee?

A. No.

Q. That is all interstate?

A. Yes.

Q. This same exhibit shows that the Central of Georgia has 4.04 miles in Tennessee. Does it have any intrastate service in Tennessee?

A. I am advised by the Central of Georgia that it has not.

Q. At line 15 of this exhibit you show the St. Louis-San Francisco Railroad with 18.34 miles of road in Tennessee. Does this carrier have any intrastate service in Tennessee?

A. Statement No. 1 shows no claim for any loss. I infer they have no intrastate service.

Q. The T. A. & G. road shows 7.85 miles in the State. Does it have any intrastate service?

A. I infer not, from the fact no claim is made for loss on intrastate.

Q. You do not show any loss in passenger revenue as reflected by the Tennessee Central Railway Company which is practically

*[123]

*all an intrastate road so far as passenger service is concerned.

MR. CLARK: When you say, Mr. Jourolmon, a Tennessee road, you mean a road lying within the confines of Tennessee?

MR. JOUROLMON: Correct. Of course, I realize they carry interstate passengers.

MR. CLARK: It has been held such railroads are interstate carriers.

MR. JOUROLMON: Of course, yes.

A. I have this letter from the Tennessee Central Railway dated November 11, 1943: "In reply to your circular letters of September 18 and November 2 regarding passenger fares and charges for intrastate traffic between points in Tennessee, I.C.C. Docket 29037, wish to advise that as a result of our office being destroyed by fire, and the further fact that we are far behind with ticket work, and the limited force with which to keep it up, it will be impossible for this company to furnish you statistics requested by you."

Q. (By Mr. Jourolmon) Where did you get your figures with reference to the Nashville, Chattanooga & St. Louis?

A. From the accounting department, and Mr. Hopkins is here to answer any questions concerning those figures.

Q. Did you know that that carrier has always declined to give

the Tennessee Commission any breakdown as to interstate and intrastate figures?

*[124]

*A. I have no knowledge of any such facts.

Q. You didn't know then that we had always been advised it was impossible for us to get them?

MR. CLARK: That is not cross examination. I ask that that be omitted.

EXAMINER McGRATH: Hasn't he answered your question?

MR. JOUROLMON: No, sir, he hasn't, and it has been objected to. He says it is not cross examination.

MR. CLARK: It is not. The witness said he had had no information what the N. C. & St. L. has said to the Commission, then counsel indulges in some side remarks.

MR. JOUROLMON: No, I did nothing of the sort, I asked him definitely a question.

MR. CLARK: He answered that.

EXAMINER McGRATH: What is the second question?

(The question was read).

EXAMINER McGRATH: Wouldn't that necessarily follow the first answer?

MR. JOUROLMON: It might, and it might not.

MR. CLARK: Certainly he wouldn't know it.

MR. JOUROLMON: We have a right to ask the question, I think.

EXAMINER McGRATH: What is your answer?

THE WITNESS: No.

Q. (By Mr. Jourolmon) The next thing, Mr. Tassin, is this

*[125]

*reference to excess profits taxes. Can you give us the information as to which carriers are subject to excess profits taxes?

A. No.

MR. CLARK: He has heretofore answered that he could not.

Q. (By Mr. Jourolmon) Can we not obtain that right now through the same parties who have given you this information?

A. I don't know.

Q. Does the C. N. O. & T. P. Railway belong to the Southern Railway?

A. Yes.

MR. CLARK: It belongs in the System.

THE WITNESS: It is in the System, it doesn't belong to the Southern Railway.

Q. (By Mr. Jourolmon) Do you have any information with reference to the C. N. O. & T. P. Railway?

A. Yes.

Q. What is the information with reference to excess profits taxes of the C. N. O. & T. P. Railway?

A. I would say offhand from my general knowledge that the C. N. O. & T. P. is in that same class.

Q. In the same class as what?

A. As the Southern.

Q. Which simply means that it is paying excess profits taxes?

A. Yes.

*[126]

*MR. JOUROLMON: Mr. Examiner, the carrier has offered as supporting evidence these other gentlemen who have supplied Mr. Tassin certain information. I wish to direct my inquiry now to them.

EXAMINER McGRATH: Have you any further questions to ask Mr. Tassin?

MR. JOUROLMON: Not unless it is developed from some of these other answers that are received from the other gentlemen.

MR. CLARK: Do you wish to finish with him now on your direct? He will still be here.

MR. JOUROLMON: Mr. Examiner, it seems as long as they have presented them in this way and stated in presenting them that this is—these tax figures are based upon information received from certain men who are his advisers and are sitting right here in the room, that the proper thing is to take those right now.

MR. CLARK: Didn't you say it was statement 1?

THE WITNESS: Statement 1.

MR. CLARK: He didn't say the others were?

THE WITNESS: No.

MR. CLARK: It was statement 1 that I made tender of these other gentlemen in connection with.

MR. HENDLEY: Oh, I beg your pardon.

EXAMINER McGRATH: What is the source of the other figures?

*[127]

*THE WITNESS: Figures with respect to the tax accruals, reports to the Interstate Commerce Commission rendered by the separate carriers.

MR. CLARK: Mr. Examiner, each page has its source.

Q. (By Mr. Jourolmon) In other words, your statement No. 16, which is page 18 of your Exhibit, was not derived from any information from these various accounting authorities of the various railroads?

A. No. The source is shown at the bottom of the page.

Q. You are not able to tell by examining the 1942 returns which of those roads are subject to excess profit taxes?

A. No.

EXAMINER McGRATH: Are excess profit taxes shown separately from income taxes?

THE WITNESS: Income taxes are shown as a lump sum.

EXAMINER McGRATH: Income taxes and excess profit taxes?

THE WITNESS: They are all in the same figure.

Q. (By Mr. Jourolmon) Now, is that shown on the reports which the carriers made to the Interstate Commerce Commission from which you derived this Exhibit?

A. Yes.

Q. But you did not—

A. The income tax figure as a whole is shown without breakdown. As to how much of it is excess profit tax, if any, I don't know.

*[128]

*Q. Can you state which of these carriers are subject to income and excess profit taxes?

A. I cannot.

MR. CLARK: Except for our own roads.

THE WITNESS: Our own roads.

MR. JOUROLMON: Except for your own roads?

MR. CLARK: That is the Southern.

MR. JOUROLMON: And the C. N. O. & T. P.?

THE WITNESS: I can say that they are subject to income taxes, because their reports show that. I cannot say if any of it is excess profit taxes.

Q. (By Mr. Jourolmon) At page No. 8 and statement No. 6 you have an Exhibit, and I wish you would state what that is designed to show.

A. By how much operating income, gross, would have to be increased to provide a 5 ¾ per cent return on investment.

Q. And the conclusion which you reach in that is that these carriers which operate over the entire State would need to receive 12 per cent more, while for that part of the line in Tennessee alone it would be 10 per cent more?

A. No, that is not the proper interpretation; that if we weight in proportion to their total mileage the needed amount, it would be 12 per cent additional. If we weighted it in proportion to their miles in Tennessee, the group average would be 10 per cent increase.

*[129]

*Q. Doesn't that mean that the operating results in Tennessee are slightly more advantageous to the carriers than in those other States?

A. No, it does not mean that. It simply means that the relation of the carriers in Tennessee is different to their relation in their respective territories as a whole.

Q. Would you say that it would mean that transportation conditions in Tennessee are poorer than they are in the other sections?

A. No, no, it is merely a problem of getting a representative group average on basis of given relationships, the State as compared with the Regional figures.

Q. On your Exhibit, page 6, which is statement No. 4, does this show that the Tennessee railroads have a rate of return slightly above those of the rest of the Southern Region?

A. Weighted as a group.

Q. Weighted as a group?

A. Yes.

MR. JOUROLMON: I think that is all, Mr. Examiner. I would like to ask now for the accounting witness who gave the information with reference to the N. C. & St. L. Railroad.

EXAMINER McGRATH: Let's see if we have any further cross examination of Mr. Tassin.

(No response.)

EXAMINER McGRATH: Are there any other questions on

*[130]

redirect *examination?

MR. CLARK: One question.

REDIRECT EXAMINATION

Q. (By Mr. Clark) On Statement 4, and for that matter various other statements, the roads you have shown as Tennessee lines, I will ask you whether or not they are the principal rail lines in Southern Region?

A. They are.

MR. CLARK: That is all.

Q. (By Examiner McGrath) Have you made any comparisons that would enable you to give us for the record what the rate of return is from passenger service of all the class one railroads in Southern Territory for 1942 and for the—well, say a representative period in 1943?

A. No, because we have no separation of the basic measurement. In other words, the cost of the property, we have no separation as to how much is purely freight and how much is purely passenger, how much common to both freight and passenger.

We have no basis for ascertaining that information.

EXAMINER McGRATH: I have no further questions. Are there any further questions?

(No response.)

EXAMINER McGRATH: That is all, sir.

(Witness excused.)

EXAMINER McGRATH: Now, off the record.

*[131]

*(Discussion had off the record.)

J. L. HOPKINS

was sworn and testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Gwathmey) Mr. Hopkins, before you are questioned, will you please state your name, your residence, and your connection with the Nashville, Chattanooga & St. Louis Railway?

A. J. L. Hopkins. I live in Nashville.

Q. What is your connection?

A. I am special accountant for the Nashville, Chattanooga & St. Louis Railway.

Q. Did you furnish to Mr. Tassin for account of the Nashville, Chattanooga & St. Louis Railway the figures which he has incorporated into statement 1 of his Exhibit No. 6?

A. Yes, sir.

MR. GWATHMEY: Mr. Jourolmon, the witness is available for any questions.

CROSS EXAMINATION

Q. (By Mr. Jourolmon) Mr. Hopkins, the figures you furnished showed the loss as it is termed in intrastate revenues for three different periods. How were those figures compiled?

A. We compile the intrastate Tennessee passenger revenues currently. Not all of those passenger fares are subject to the proposed increase which applies as I understand it; only to coach

*[132]

fares. They do not apply to fares in Pullman cars *nor to so-called furlough tickets.

Q. What is the gross amount of intrastate revenues—

A. I am sorry, I did not have any—

EXAMINER McGRATH: Let him finish his question.

Q. (By Mr. Jourolmon) —gross amount of intrastate revenues in Tennessee for those periods?

A. I am sorry I don't have the figures with me but I can furnish them and would be glad to put them in the record if desired. I did not bring any papers with me to the hearing.

MR. GWATHMEY: Will it be satisfactory for Mr. Hopkins to give you that information in the morning?

MR. JOUROLMON: Yes sir, indeed.

MR. GWATHMEY: He has it over at his office, he just hasn't got it here.

MR. JOUROLMON: That will be satisfactory.

THE WITNESS: You want that for the periods referred to in this Exhibit?

MR. JOUROLMON: That is right.

THE WITNESS: I can give it to you.

MR. GWATHMEY: You will have it in the morning, will you, Mr. Hopkins?

THE WITNESS: Yes, sir.

Q. (By Mr. Jourolmon) Did your studies develop any figures at all with reference to the amount of interstate revenues in Tennessee?

*[133]

*A. We have those figures currently compiled, but I made no study of any loss, because there would be none. The increases have already been granted.

Q. No, no, I am asking you if you have the compilation of figures?

A. Yes, sir.

Q. You do have those?

A. Yes, sir.

Q. Will you supply those also?

A. Yes, sir.

Q. Are you in the accounting department of the carrier so that you have access to the records with reference to tax accruals and tax payments?

A. I have access to them, but I have no connection with the compilation of them.

Q. Can you give us the information with reference to the amount of excess profits taxes of the N. C. & St. L. Railway, or even advise us as to the bracket the N. C. & St. L. Railway is in?

A. For what period, what year?

Q. For the periods which have been stated on page 18, statement No. 16, of Mr. Tassin's Exhibit No. 6.

A. I can give you our accrual of those excess profits taxes, but we will not know until they have been passed on by the Treasury Department what the final figures are.

MR. GWATHMEY: You mean the United States Treasury

*[134]

Depart*ment, do you not?

THE WITNESS: That is right.

EXAMINER McGRATH: What years do you have reference to, Mr. Hopkins?

THE WITNESS: The years in which we were in the income tax or the excess profits tax brackets.

MR. JOUROLMON: It will be the years 1941 and 1942, if at all.

THE WITNESS: Probably.

MR. JOUROLMON: In other words, there was no excess profits tax back of those two years?

THE WITNESS: Not prior to that time, no, sir.

EXAMINER McGRATH: Off the record

(Discussion had off the record.)

MR. JOUROLMON: The suggestion has just been made that some of these taxes may have started a little earlier than that, in 1940. Will you just check back for the record?

THE WITNESS: I will go back as far as taxes are accrued.

MR. JOUROLMON: Very good. Thank you.

MR. GWATHMEY: Off the record.

(Discussion had off the record.)

EXAMINER McGRATH: Are there any further questions of this witness?

(No response.)

EXAMINER McGRATH: Thank you.

(Witness excused.)

*[135]

*MR. JOUROLMON: Now, for the Louisville & Nashville Railroad Company, if I may have the witness.

MR. GWATHMEY: Mr. Kennedy is here. Mr. Examiner, I merely asked Mr. Hopkins a question as to his qualifications. I want it understood that these witnesses are being called by Mr. Jourolmon, and they are his witnesses.

MR. JOUROLMON: And I am quite willing to accept these witnesses, with a great deal of pleasure.

MR. GWATHMEY: Very well. Do you want me to qualify him or will you?

MR. JOUROLMON: I will be glad to qualify him if you want me to. You did before, and I deferred to you.

MR. GWATHMEY: Go ahead, your privilege.

WILLIAM F. KENNEDY

was sworn and testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Jourolmon) Please state your name for the record, Mr. Kennedy.

A. William F. Kennedy.

Q. And your experience?

A. I am Assistant Comptroller of the Louisville & Nashville Railroad Company at Louisville, Kentucky. I have been employed in the accounting department of that road for about 30 odd years.

Q. Did you furnish the information to Mr. Tassin which he

*[136]

has *introduced in this record on statement No. 1 at page No. 3 of his Exhibit 6?

A. I did.

MR. GWATHMEY: For the L. & N.?

MR. JOUROLMON: For the L. & N., yes.

THE WITNESS: For the L. & N.

Q. (By Mr. Jourolmon) How was this information compiled?

A. We keep the intrastate revenue and the interstate revenue in the State of Tennessee separately as a current matter. We made appropriate deductions from the intrastate totals for those fares to which the increases do not apply, and thereby obtained the approximate loss that would result on the balance.

Q. Do you have the total amount by years of intrastate revenue in Tennessee?

A. The total intrastate revenues for the year ending February 28, 1943, were $266,859. For the year ended September 30, 1943, they were $348,134, for the ten months ended September 30, 1943, they were $318,669. Those were the same periods as shown in statement No. 1 of Mr. Tassin's Exhibit 6.

Q. Are your accounting records kept in such manner that you could supply information as to the amount of interstate revenues which accrue in Tennessee?

A. They are.

Q. Can you give the figures for that for those same periods?

A. I don't have those figures with me, but they are on file

*[137]

*in Louisville, Kentucky, and can be furnished if I am given time in which to do it.

Q. Will you make those available?

A. Yes, sir. How shall I do that?

MR. CLARK: Let's see what you are asking for.

MR. JOUROLMON: The interstate revenues.

MR. CLARK: Interstate passenger revenues?

MR. JOUROLMON: In Tennessee.

MR. CLARK: That is passenger fare revenues?

MR. JOUROLMON: Passenger fare revenues.

MR. CLARK: Do you understand that it is passenger ticket revenues, Mr. Kennedy?

THE WITNESS: Yes, sir.

EXAMINER McGRATH: Is that for both coaches and parlor car travel? Is there a separation made?

MR. JOUROLMON: This should be reduced simply to coach.

THE WITNESS: We don't have the separation as between coaches and Pullmans. Our totals are for all classes of tickets.

MR. JOUROLMON: If that is the best that you have, I think it would be satisfactory to file it in that form.

EXAMINER McGRATH: For the same periods covered by statement 1?

MR. JOUROLMON: Yes, that is the question.

EXAMINER McGRATH: Is it agreeable that the Respondent

*[138]

furnish *that?

MR. CLARK: Yes, sir, we will be very glad to furnish it, if you think it will be helpful.

EXAMINER McGRATH: I am not passing upon that.

MR. CLARK: I really don't—I am somewhat loath to burden the L. & N. Railroad people with the duty of furnishing that. I have not had an opportunity to confer with the witnesses to see if it can be conveniently done. Assuming it can be done, I am sure the L. &. N. is quite willing to furnish it, but in this day and time I have to be a bit careful about making such a commitment. May I ask the witness in open Court, can you furnish it, Mr. Kennedy?

THE WITNESS: We can furnish it.

MR. CLARK: Without additional expense and trouble?

THE WITNESS: Yes, sir, for total interstate revenue, all classes of passenger tickets.

MR. CLARK: You also gave another figure a moment ago. What was that for?

THE WITNESS: That was for the total intrastate, all classes of tickets.

MR. CLARK: Was that purely station-to-station within Tennessee?

THE WITNESS: Yes, sir.

MR. CLARK: Or did it include any allotment of the interstate revenue to the State?

*[139]

*THE WITNESS: That was strictly intrastate revenue between points in Tennessee.

MR. CLARK: That was strictly that?

THE WITNESS: Yes, sir.

MR. CLARK: Let's find out there did you separate their coaches and Pullmans?

THE WITNESS: That figure that I read into the record includes all classes.

MR. CLARK: I merely wanted to be clear what he had furnished, and what he was agreeing to furnish.

EXAMINER McGRATH: Will ten days be sufficient? Did you want to add something?

MR. JOUROLMON: Yes, sir. A new angle to this was just opened up by Mr. Clark's question. I am not sure I understand the meaning of it.

Q. (By Mr. Jourolmon) Is there any allotment of interstate ticket fares or revenue made to intrastate?

A. No, sir.

Q. What did you understand the question to be?

A. I didn't understand it.

MR. CLARK: I asked if that figure included any allotment, that is all on earth I asked him. He said it did not.

THE WITNESS: If it moved intrastate, it is all intrastate, and if it is interstate, obviously no part of it could be assigned as intrastate business.

*[140]

*Q. (By Mr. Jourolmon) There would be no reason for making any allotment of any interstate revenue to intrastate revenues?

A. No, sir.

EXAMINER McGRATH: Will ten days be sufficient?

THE WITNESS: Yes, sir.

EXAMINER McGRATH: To enable you to provide that information?

THE WITNESS: Yes, sir.

EXAMINER McGRATH: Permission to file that information within ten days is hereby granted, and in your letter of transmittal please refer to the transcript of the testimony, the page on which this permission appears if you have it by that time. If you don't, you cannot supply that.

(Information to be furnished: Amount of interstate revenues which accrued in Tennessee for the periods mentioned in statement 1, Tassin's Exhibit 6, within ten days.)

MR. GWATHMEY: May I say a word off the record?

(Discussion had off the record.)

EXAMINER McGRATH: Send two copies to the Commission, addressed to the Secretary of the Commission, and furnish the Tennessee Commission and the Office of Price Administration with a copy each. And I suppose your Counsel will want a copy also?

THE WITNESS: Yes, sir.

EXAMINER McGRATH: Are there any further questions?

*[141]

*Q (By Mr. Jourolmon) Mr. Kennedy, will you turn to page 18 of the Exhibit? That is statement No. 16, and has to do with railway tax accruals. At line No. 11 of this Exhibit there is shown certain tax accruals of the L&N Railroad Company. Are you in a department of the L&N Railroad Company which furnishes tax accrual figures of this sort, and have access to them?

A. I am, yes, sir.

Q. Will you simply state whether the increased tax accruals for the years 1940, 1941, and 1942 which are reflected on this page are due in some part to excess profit taxes?

A. They are due in the major part to income taxes, but the extent they are due to excess profit taxes I could not determine without examining the records. The increase in 1942 I know is

largely due to the excess profit taxes.

Q. And that increase is approximately thirty million dollars?

A. That is correct, yes, sir.

Q. Is that the top bracket of excess profit taxes, in other words the 81 per cent bracket excess profit taxes?

A. It is, yes, sir.

MR. JOUROLMON: That is all.

EXAMINER McGRATH: Are there any further questions?

(No response.)

EXAMINER McGRATH: You are excused.

(Witness excused.)

*[142]

*EXAMINER McGRATH: Is there anybody else you want to call?

MR. JOUROLMON: Yes, sir, I think so. The Gulf, Mobile and Ohio Railroad, if you please, Mr. Peer, will you take the stand, please?

H. A. PEER

was sworn and testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Jourolmon) Mr. Peer, will you state your name and address?

A. H. A. Peer, Assistant to Auditor of Receipts, GM&O Railroad. Mobile, Alabama.

Q. What is your capacity and experience with the carrier?

A. Well, for the last thirty years I have been in the accounting department, that is the receipts department of the accounting department, during which time I have had to do with receipts accounting, interline accounting, passenger accounting, freight accounting, and for the last four years I have been assistant to the auditor of receipts.

Q. Thank you, sir. You have been present here in the room while I have asked these questions of these other gentlemen. Were the figures which appear on page 3 of Mr. Tassin's Exhibit, statement No. 1, line 13, supplied by your office?

A. Right.

Q. And were they made up approximately in the same way that has been described by these other witnesses?

*[143]

*A. Yes, precisely, it is on an actual basis. We work up our intrastate revenues, passenger revenues each month, that is accumulate them, and we went through the reports and figured out the items that would be subject to this change of fare, increased change of fares, and from those figures and reports we compiled the figures shown here. I checked these figures myself.

Q. These figures are rather small?

A. Yes, they don't amount to very much.

Q. I will not ask you to supply the complete record that I have asked of these other gentlemen, but I would like to ask you just this, are these figures roughly about 25 per cent of what the total intrastate revenue would be for your line?

A. I have it right here. I will be glad to submit this to you.

EXAMINER McGRATH: Just read into the record what the total is.

Q. (By Mr. Jourolmon) I would be glad to have you do so.

A. Here is for the twelve months period ended February 28, 1943, the Tennessee intrastate revenue is $15,035.25, that is the actual figure. What other figure did you want?

Q. For the period ended September 30, 1943.

EXAMINER McGRATH: That is for the year ended then.

THE WITNESS: Wait a minute. I don't think I have the

*[144]

breakdown of it. I can give you that figure by some other *calculations. The figures that I have here were compiled just as Mr. Tassin requested them. He wanted a breakdown of certain periods, and he made it very clear as to why he made the breakdown for those periods. I have it for twelve months through February, 1943, twelve months through June, 1943, seven months through June, 1943, and then I have the other months in separate totals. I will be glad to put those figures together for you. It won't take but a little while to do it.

Q. Your carrier is evidently on a 2.2 rate per mile in practically all except a very small proportion of your railroad?

A. That is right, and it is 1.65.

Q. This is less than 2 per cent of your total revenues?

A. Yes, sir.

Q. Where does the 1.65 rate apply?

A. That is on round trip tickets, and the various intrastate round trip tickets.

EXAMINER McGRATH: I don't believe you understood his question.

MR. GWATHMEY: Doesn't the GM&O have to meet the fare in certain instances of other railroads that are now on the 1.65 basis?

THE WITNESS: Yes, sir.

EXAMINER McGRATH: Wasn't your question directed to that?

*[145]

*MR. JOUROLMON: That is right.

EXAMINER McGRATH: Between what points or in what part of the State?

Q. (By Mr. Jourolmon) That is right, between what points and what part of the State do you have 1.65? I am not referring to your round trip fares.

A. That is a question for a rate man.

EXAMINER McGRATH: You are unable to answer that?

THE WITNESS: I am unable to give that information.

Q. (By Mr. Jourolmon) Where did you get these small amounts of five hundred dollars and four hundred dollars? You got that from certain tickets?

A. No, we got them from the reports of the tickets. The foreign line ticket reports, M&O interline ticket reports, agents ticket reports and conductors ticket reports.

Q. And you don't know what points they were applicable to?

A. No, we didn't go into that feature of it at all. We went

into the feature of picking out the intrastate items and the tickets that would be involved in this case.

Q. Well, in picking those out didn't you have to know what points were involved? I am simply trying to find out how you got at this. I am not trying to embarrass you.

A. Oh, no, I don't look at it that way. No, sir, I didn't. In the first place, all of the intrastate fares—that is worked up cur-

*[146]

rently as I stated. We get the total miles that are made covered by those movements. Then we would take the total miles and multiply that by 1.98, and then that would give you the amount that would be subject to the increase.

MR. JOUROLMON: From whom could I find out, if anybody, who knows about this?

MR. GWATHMEY: Do you really think it is a matter of any importance?

MR. JOUROLMON: It is not very important.

MR. GWATHMEY: To show the particular points on the GM&O?

THE WITNESS: Mr. Duggan could possibly give the rates, I don't know.

MR. GWATHMEY: It don't seem to me it has any particular bearing to pick out the points where they happen to have the 1.65 fare in. He stated it is wherever they have to meet the established fare of other railroads. I am not trying to be obstructive at all.

MR. JOUROLMON: All I am trying to do is to find out if there is any justification. If that is on some little branch where there is very low grade of service, or something like that,—I am trying to find out the justification for the lower fare.

MR. GWATHMEY: I didn't want to interrupt you, sir.

MR. JOUROLMON: So for that reason—

EXAMINER McGRATH: This witness apparently is not qualified to give it.

*[147]

*THE WITNESS: No.

MR. JOUROLMON: He doesn't know, so I will quit.

EXAMINER McGRATH: Is that all you want to ask?

MR. JOUROLMON: No, I want to go to page 18.

THE WITNESS: About the tax accruals, I have nothing whatever to do with those. That is not even in our branch of the office.

Q. (By Mr. Jourolmon) That is not even in your branch of the office?

A. No, sir.

Q. You don't know whether the GM&O is paying excess profit taxes in 1942?

A. I would rather not say, I don't know.

MR. JOUROLMON: Very good.

EXAMINER McGRATH: Is that all?

MR. JOUROLMON: That is all.

EXAMINER McGRATH: Are there any other questions?

(No response.)

EXAMINER McGRATH: You are excused, sir.

(Witness excused.)

MR. JOUROLMON: Is the Illinois Central representative here?

JOHN L. SHARPE

was sworn and testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Jourolmon) Will you state your name?

A. John L. Sharpe.

[148]

Q. Your address and connection with the railroad?

A. Chicago, Illinois, Chief Clerk, Officer of Passenger and Station Accounts, Illinois Central System.

Q. The Illinois Central Railroad also operates the Yazoo & Mississippi Valley Railroad?

A. Yes, sir.

Q. On Mr. Tassin's Exhibit 6, statement No. 1, page 3, there is shown a small amount of revenues which are subject as I understand it to the 1.65 rate. Does that mean that the bulk of your revenues are not subject to that rate?

A. It does.

Q. The bulk of your intrastate revenues?

A. Yes, sir.

Q. About what proportion of your revenues are subject to it?

A. It would be very small, probably—oh, probably 2 per cent.

Q. That is about 2 per cent?

A. Yes.

Q. It has been stated here in the record that this is to meet the competition of other carriers. Precisely what is meant by that, is that what this represents in your case?

A. To the best of my knowledge we have no competition like that that we would have to meet. We have no competitive points.

Q. What does it represent, what is the history of this 1.65

*[149]

*rate?

A. You mean between what stations?

Q. Yes.

A. Oh, it is between Memphis and Covington and Dyersburg, Jackson, Tennessee, Meridian, Milan.

EXAMINER McGRATH: What other roads between those points maintains a 1.65 fare?

MR. GRAY: May I straighten this out? Mr. Jourolmon is talking about a one-way fare on a 1.65 basis. These figures represent round trip fares. We have no lower fares than the 2.2 within the State of Tennessee on one-way trips. These increases come under your round trip increases. There is not any one-way basis here at all so far as the IC is concerned.

EXAMINER McGRATH: You are speaking for the IC, are you?

MR. GRAY: Yes, sir, I am.

MR. JOUROLMON: This then represents certain increases which are being applied for with reference to your round trip fares, is that right?

THE WITNESS: That is right.

EXAMINER McGRATH: Round trip coach fares, is that right?

THE WITNESS: Round trip coach fares, that is right, yes, sir.

MR. GWATHMEY: Mr. Examiner, maybe I had better remind you at this point that the round trip fares involved in this case include both coach fares and Pullman fares.

*[150]

*EXAMINER McGRATH: Well, that has not been made very clear so far.

MR. GWATHMEY: Mr. Gaffney stated it specifically.

MR. JOUROLMON: Mr. Examiner, I did not realize that this issue was involved in this case at all. This has been something new that has struck us, and I think that unquestionably the Tennessee Commission will make a change in those schedules in order to enable these carriers to put in those fares which are involved in this; that is not the question which we understood was involved, and I don't think the Tennessee Commission has had any notion that this was part of the application.

MR. GWATHMEY: The Tennessee Commission was furnished with a copy of the railroads' petition for investigation, and was also furnished with the Interstate Commerce Commission's order of investigation, both of which clearly show that this proposed change in round trip fares is involved.

EXAMINER McGRATH: Round trip fares in Pullman equipment?

MR. GWATHMEY: In Pullmans and in coaches.

MR. JOUROLMON: Well, so far as the round trip fares are concerned, the Tennessee Commission's position simply is this in reference to that issue; so far as that is concerned we don't regard that as the issue here, and we will permit them to be increased, and the Commission will put out an order to that effect.

EXAMINER McGRATH: Could you fix some date in the

*[151]

future *when that will be done?

MR. JOUROLMON: Tomorrow.

EXAMINER McGRATH: Will you advise the parties and the Commission to that effect?

MR. JOUROLMON: Yes.

MR. GWATHMEY: Mr. Chairman, this thing has become a little bit involved, and I doubt whether my friend Mr. Jourolmon understands exactly what he is offering to do. It is my understanding that he could not approve independently a change in the round trip fare without at the same time approving a change in the one-way fare, because the round trip fare is based upon the amount of the one-way fare. All we are seeking to do is to, as to the round trip fare—

EXAMINER McGRATH: Could we get any solution with respect to the fares in Pullman cars? Could that be—

MR. GWATHMEY: Well, that is what I just stated.

MR. JOUROLMON: Those Pullman fares are round trip only, and were not involved as the Commission has always understood in the matter. If these particular carriers, Gulf, Mobile and Ohio and Illinois Central Railroad have a fare structure which is already based on the 2.2 rate, I don't see how the Commission could refuse to let their round trip fares be predicated and based on exactly that same rate.

MR. GWATHMEY: Is the Tennessee Commission's proposition to have one basis of fares for certain railroads in the State

*[152]

*and another basis for other railroads in the State?

MR. JOUROLMON: Well, that is a matter for argument. We might argue it.

MR. GWATHMEY: I am just asking it.

MR. JOUROLMON: We will argue that at the proper time.

EXAMINER McGRATH: In order to possibly simplify this, could there be any separation made between the issues with respect to coach fares and the fares in parlor or sleeping cars?

MR. GWATHMEY: In what respect?

EXAMINER McGRATH: Just the respect the gentleman just mentioned, that the Tennessee Commission is ready and willing

to grant authority to put in the fares sought by the Respondents for travel in parlor or sleeping cars, as I understand it.

MR. JOUROLMON: Yes, that is right. That matter has not been made of issue before the Tennessee Commission yet as I understand it.

MR. GWATHMEY: Mr. Examiner, at this late date, and with the hearing having proceeded as far as it has, I don't know what the Tennessee Commission may propose to do about round trip fares, but all of our testimony and our Exhibits and our computations of revenue have included those figures. If there is some proposition here to take that out of the case, it is simply going to complicate the record very badly. There is no way in which

*[153]

we can segregate the figures. Up to this *time the instrastate round trip fares are on a different basis from the interstate round trip fares, and we are asking to have that situation corrected.

MR. JOUROLMON: I am sorry it will complicate the record, but I don't think it will be the first complicated record that the Interstate Commerce Commission has ever had.

MR. GWATHMEY: If the Tennessee Commission are so willing to give these railroads what they are asking for, I respectfully submit that the Tennessee Commission might well have done it before bringing on this hearing.

MR. JOUROLMON: In answer to that, I would simply like to state that the Tennessee Commission had no information before it at the time of the hearing which the carriers sought bearing upon this matter at all, and gave the Commission nothing on which it could grant the relief which now suddenly turns up at this late date.

MR. GWATHMEY: Mr. Examiner, I am sure Mr. Jourolmon is misinformed or has forgotten the facts. The railroads filed tariffs with the Tennessee Commission to become effective on December 1, 1942. Those tariffs carried the proposed change in round trip fares, as well as in one-way fares, and those tariffs were suspended by the Tennessee Commission.

EXAMINER McGRATH: Are you speaking about coach fares now?

MR. GWATHMEY: Both, all of them, round trip fares in Pullmans and coaches. And here is the order of the Tennessee

*[154]

*Commission, which incidentally is made a part of our petition, and it sets out specifically, in coaches, one-way, fifteen day limit, in parlor or sleeping cars, and so on. That is the order of the Tennessee Commission which we are asking this Commission to consider.

EXAMINER McGRATH: Perhaps we can clear that matter up further when Mr. Gaffney returns to the stand. I don't know as we can. Have you any further questions to ask of this witness?

MR. JOUROLMON: No, if it is on a matter that we are not interested in to start with, I don't care to ask anything further. I would like to ask him with reference to excess profit taxes, but as I understand it that is not in your department.

THE WITNESS: I am not qualified, I could only give you hearsay.

MR. JOUROLMON: He is not qualified for that, and so that is all.

EXAMINER McGRATH: That is all, sir.

(Witness excused.)

EXAMINER McGRATH: Is there anybody else that you want to question?

MR. JOUROLMON: I think that that—I would like to ask the CC&O representative.

MR. GWATHMEY: Is he here?

*[155]

*MR. CLARK: We haven't anybody from the CC&O.

MR. JOUROLMON: That is all.

EXAMINER McGRATH: We will take a brief recess.

(Short recess.)

MR. JOUROLMON: I wish to recall Mr. Peer.

H. A. PEER

having been previously sworn, testified further as follows:

Q. (By Mr. Jourolmon) Mr. Peer, I have learned that your testimony was given under a misapprehension, and that you were discussing throughout your testimony, so far as the GM&O is concerned, the round trip fares, that adjustment.

A. The round trip coach fare, we didn't have any round trip intrastate first class fare.

Q. And you have no 1.65 coach fare in the State of Tennessee?

A. That is one-way.

Q. One-way coach fares in the State of Tennessee. You do have certain one-way 1.65 fares which are applicable interstate?

A. That is right.

Q. Between points, various points, but you do not have such in Tennessee?

A. Not in Tennessee.

MR. JOUROLMON: All right. I think that will clarify that.

MR. GWATHMEY: Mr. Examiner, I think this examination

*[156]

shows the danger in asking an accounting man about fares. *Mr. Peer has just stated that he has certain interstate 1.65 cents one-way fares. The testimony in this case is to the effect that all of the interstate fares, regardless of the railroad—

THE WITNESS: The interstate is 2.2.

MR. GWATHMEY: Well, now you don't know, do you, Mr. Peer?

THE WITNESS: No, I do not, I would not qualify on the rate. I said that to begin with.

MR. GWATHMEY: The record is that all of the interstate fares are now on the 2.2 basis, and that is a fact.

EXAMINER McGRATH: Do you have any information to the contrary?

THE WITNESS: No, sir, none whatever.

EXAMINER McGRATH: When you made that statement a while ago that some of your interstate fares were—

THE WITNESS: Intrastate is what I had in mind.

EXAMINER McGRATH:—on the 1.65 basis what did you have reference to?

THE WITNESS: I had the intrastate round trip on my mind.

MR. JOUROLMON: Mr. Examiner, I will make a statement here as to what misled him there. Mr. Duggan, the Publishing Agent, so advised us during the intermission, advised Mr. Peer and myself. That is correct, isn't it?

MR. DUGGAN: Originally they had 1.65 in effect, meeting the L&N rates. When the L&N raised their rates to 2.2, they

*[157]

*raised theirs to 2.2 interstate. He didn't have any intrastate in Tennessee.

MR. JOUROLMON: You did advise Mr. Peer that a few moments ago?

EXAMINER McGRATH: Mr. Duggan has not taken the witness stand yet, and this is not strictly speaking evidence.

MR. JOUROLMON: You were trying to find out where he got the information, and that is where he got it.

MR. GWATHMEY: Mr. Gaffney testified specifically with respect to all of the railroads operating in Tennessee that the interstate fares are now on the 2.2 cents basis. If that fact is questioned by anybody we will prove it again, but it is in the record now.

EXAMINER McGRATH: Do you dispute that?

MR. JOUROLMON: No, I simply take the information that is given me. When it is given me and the witness swears it, I take it and give it full face value. If it is incorrect, I don't want it in the record.

EXAMINER McGRATH: Do you want to ask this witness any further questions?

MR. JOUROLMON: No, that is all.

EXAMINER McGRATH: That is all, sir.

(Witness excused.)

EXAMINER McGRATH: Now then, we will have Mr. Gaffney back.

JOHN F. GAFFNEY

having been previously sworn, testified further as follows:

*[158]

*CROSS EXAMINATION (Resumed)

Q. (By Mr. Jourolmon) Mr. Gaffney, you have testified that during the past ten years the carriers, your carrier has expended a large amount of money air conditioning the passenger equipment.

A. A considerable portion of it, yes, sir.

Q. Now, I just asked you did you have Diesel engines. Do you have no Diesel engines whatever?

A. None.

Q. On the N. C. & St. L. Railway?

A. None, no, sir, that is passenger engines.

Q. Passenger?

A. I understood you were talking about passenger.

Q. Yes, sir. Do you know what proportion of that equipment which has been air conditioned is made available to intrastate passengers?

A. No, I do not.

Q. Is there some part of it which is not made available to intrastate passengers, but that is used solely for interstate passengers?

A. Of this air conditioned equipment that we have?

Q. Yes.

A. I don't know of any that is so set aside, Mr. Jourolmon.

Q. You don't know any part of it which is set aside strictly for interstate passengers at all?

*[159]

*A. Not strictly, because I don't know of any train but what we handle intrastate as well as interstate passengers on.

Q. Are there some of your trains on which practically 90 per cent of the service is interstate, rather than intrastate, as reflects Tennessee?

A. Ask me that question again.

EXAMINER McGRATH: The Reporter will read it.

(The question was read.)

A. No, I am pretty certain not. I would have to investigate to see, but I am pretty certain—you mean 90 per cent interstate and 10 per cent intrastate?

Q. (By Mr. Jourolmon) That is it, exactly.

A. I don't know of any such.

Q. You don't have any trains at all in which 99 per cent of your passengers would be interstate and only 1 per cent intrastate?

A. I can't answer that. I don't know about that, I don't think that condition exists though, anywhere on the line, but I won't say positively.

Q. Turning to your Exhibit No. 2, this Exhibit purports to show how interstate passengers could possibly avoid paying interstate fares by working out a combination of an intrastate fare and a short haul interstate fare?

A. That is right.

Q. Is that right?

*[160]

*A. Yes.

Q. Now, your first illustration compares from Nashville, Tennessee, to Hickman, Kentucky, is that right?

A. That is correct.

Q. What train would it be possible for this to be practiced on?

A. You could take train No. 4, leaving Nashville at 8 o'clock in the morning, or train No. 6, leaving Nashville at 1:45 in the afternoon.

Q. Train No. 4 or train No. 6?

A. That is right.

Q. That train runs the reverse direction, train No. 4?

A. Train No. 4 is westbound.

Q. Train No. 4 is westbound?

A. That is right.

Q. And operates from Hickman to Nashville?

A. That's right—no, I beg your pardon, train No. 4 operates from Nashville to Hickman.

Q. No. 4?

A. That is right.

Q. Operates from Nashville to Hickman?

A. That is right.

Q. Leaves Nashville at 8 A.M.?

A. That is right.

Q. And gets to Bruceton at what time?

*[161]

*A. 11:00 A.M.

Q. Makes connection with train No. 104?

A. No, you are looking down to Memphis now. It makes connection with No. 4 on the Nashville Division, from Bruceton down to Hickman.

EXAMINER McGRATH: That is not going on the record, that conference.

Q. (By Mr. Jourolmon) Make that statement, will you?

A. Train No. 4 operates from Nashville to Bruceton, leaving Nashville at 8 o'clock in the morning and arriving at Bruceton at 11 o'clock in the morning. There you connect with train No. 4 of the Nashville Division that leaves Bruceton at 11:20 in the morning and arrives at Hickman at 2:30 in the afternoon.

Q. At what point have you suggested that the passenger could alight and purchase an interstate ticket?

A. Woodland Mills. He would not have to alight, he could buy a ticket from Nashville to Woodland Mills, and then pay the conductor from Woodland Mills into Hickman, Kentucky, and make that possible saving shown right there.

Q. Do you know of any case where this has been done?

A. No, I do not, I cannot point out a case, but we know it is general information that it is being done.

Q. Have you discussed with any conductor on train No. 4 this particular thing?

A. I have not, no, sir.

*[162]

*Q. Has any conductor on that train ever advised you—

A. Not me, no, he has not.

Q. In writing?

A. No.

Q. Did he advise your department in writing?

A. Not in writing, no sir, but we know that people in Tennessee have average intelligence, I might say, they know they can make that saving, and they would do it without any trouble. I would do it myself. Wouldn't you, if you were making that trip down there? If I were going from here to Hickman, Kentucky, I would certainly do that in order to save that amount of money.

Q. All right. Now, your second illustration is between Nashville and Memphis, is that right?

A. Yes. That second illustration is between Nashville, Tennessee, and Jackson, Mississippi, via Memphis.

Q. Between Nashville, Tennessee and Jackson, Mississippi?

A. That's right.

Q. By way of Memphis?

A. That is right.

Q. Will you point out what train that could be done on?

A. To Jackson, Mississippi that could be done on any train that we operate between Nashville and Memphis, which would mean train No. 2 leaving Nashville at 11 o'clock that night, or train

*[163]

No. 4 leaving Nashville at 8 o'clock in the morning *or No. 6 leaving Nashville at 1:45 in the afternoon.

Q. What connections are made by those various trains?

A. Well, they have a connection, each one of those trains has a connection that could be used, with the possible exception of train No. 4 leaving Nashville at 8 o'clock. Train No. 2 has a connection at Memphis, and also train No. 6 has a connection at Memphis for Jackson, Tennessee.

Q. There are two trains then that have connections?

A. Nice convenient connections.

Q. The other trains don't have such connections?

A. The other train, train No. 4, that is the train leaving Nashville at 8 o'clock in the morning, has no close connection. In other words, train No. 4, that makes the same connection as No. 6 leaving Nashville five hours and forty-five minutes later.

Q. Have you ever been advised by the conductors on those trains of this device being used?

A. The same answer applies as to between Nashville and Hickman, Kentucky.

Q. That is that you just don't know and you have not received any information of that sort?

A. The identically same answer as I put in from Nashville to Hickman, Kentucky.

Q. In this case there would be two different conductors involved, so no conductor would be in position to give you such advice, would he?

*[164]

A. Well, no I presume not. I will say that I have never had any advice from such a conductor, but the conductor going into Memphis perhaps might talk with the passenger and find out that is what he was doing. I have never had one to report that, but we know it is general knowledge, it is being done.

Q. Your illustration No. 3 is from Memphis, Tennessee to Murray, Kentucky. What Division is that on?

A. Both of those are on the P&M Division, Paducah and Memphis Division, from Memphis to Murray.

Q. What schedules could that be accomplished on?

A. That could be accomplished leaving Memphis on train No. 105 at 7:30 in the morning, and also on train 103 at 12:30 noon.

Q. Which of these is train 105?

A. Come over here (indicating).

Q. Have you ever had any information from the conductor on that train? Is that one through train?

A. That is a through train there, yes.

Q. Have you ever had any information with reference to that?

A. No, what I mean is from Memphis—no, that is not a

through train. In other words, you change at Bruceton the same as in the other direction, on both 105 and 103. Still a passenger would purchase a through ticket.

Q. From Nashville?

A. From Memphis to —

*[165]

*Q. To Puryear?

A. Puryear, Tennessee, yes, and then pay the conductor the fare from there to Murray, and effect that saving.

Q. Are the tickets purchased from the conductor at a higher rate?

A. No, not at the present time, no, sir.

Q. You have no information of any time in which this has taken place?

A. The same answer as to No. 1, Nashville to Hickman, Kentucky.

Q. With reference to the illustration from Memphis to Guthrie, Kentucky, is that on the same Division?

A. No, sir, that is on the L&N Railroad.

Q. Is your railroad involved in that?

A. No, I just show that as an example. Our railroad is not involved in that.

Q. I take it you have no information at all with reference to any conductors on the L&N having made any reports?

A. No, sir, I have not.

MR. GWATHMEY: Mr. Examiner, this Exhibit shows on its face in the caption it sets out examples of possible reductions of interstate coach fares, et cetera. Now, can't it be understood in order to save some time here that except for giving of the reference to train schedules, Mr. Gaffney's answer as to each one of the other illustrations shown on this Exhibit would be the same as

*[166]

his answer in connection with *No. 1 illustration, that is Nashville to Hickman.

EXAMINER McGRATH: Would that satisfy your purposes?

Mr. JOUROLMON: I don't know what I will find. Off the record.

(Discussion had off the record.)

EXAMINER McGRATH: Proceed.

Q. (By Mr. Jourolmon) What carrier is involved between Mitchellville, Tennessee and Athens, Alabama?

A. The L&N Railroad.

Q. Are you familiar with any schedule on which this could be done?

A. No, I am not, but if you want me to I can get you some cases in which it could be done. I have got an official guide of the L&N, and I can get you some where it could be done.

Q. Are there any connections involved in that particular example?

A. Yes, connections at Nashville, Tennessee.

Q. From Mitchellville into Nashville?

A. Yes.

Q. Then on to Prospect?

A. Yes.

Q. On to Athens, Alabama?

A. Yes, that is right.

Q. Is the train from Nashville, Tennessee to Athens, via Prospect a through train?

*[167]

*A. The through train from Nashville to Athens?

Q. To Athens?

A. Alabama, by Prospect, a through train?

Q. Yes.

A. Yes, sir.

Q. So there again would it involve a man buying a ticket in Nashville?

A. No, not Nashville, he would buy at Mitchellville.

Q. Or in Mitchellville?

A. Yes.

Q. Through to Prospect, and then going to the conductor for the rest?

A. The conductor would just come along and collect his fare from Prospect into Athens, Alabama, and issue a cash fare receipt for it.

Q. Wouldn't your conductor know that was a violation?

A. He would not, he would not. In other words, our conductor when the first comes through—in fact, you have two conductors involved. You have a conductor on the Louisville Division into Nashville and a conductor from Nashville down to Birmingham, Alabama. Even though it was one through conductor, he would not know. If it was a through conductor, he wouldn't know, for when he checks the man he gets his transportation, then when he comes through again to check he finds out he has to pay his fare.

*[168]

*Q. He would have to assume that the man had gotten on at the last station?

A. Naturally he would.

Q. Your next example, No. 6, involves what railroad?

A. That is the Southern Railway.

Q. That is from Chattanooga, Tennessee, to Asheville?

A. To Asheville.

Q. What trains stop at Wolf Creek?

A. Now, you have a Southern Railway passenger representative here and he can answer that. We just show the various examples. Mr. Ed. Aiken, Assistant Traffic Passenger man for the Southern Railway, is here.

MR. GWATHMEY: He will be our next witness.

Q. (By Mr. Jourolmon.) I take it that you know of no cases in which this has happened on the Southern Railway?

A. No, Mr. Aiken will probably know.

Q. What carrier is involved in your example No. 7 from Johnson City, Tennessee, to Dalton, Georgia?

A. The Southern Railway and N. C. & St. L.

Q. That is the Southern Railway from Johnson City to Chat-

tanooga, at which there is a transfer to the train from Chattanooga to Dalton on the N. C. & St. L.?

A. That is right.

Q. Are you familiar with any connections on that in which this could be done?

*[169]

*A. I am sure it can be done. You would have to get an official guide to show that, because there are two railroads involved. A connection is possible with all of the trains that run over the Southern from Johnson City down to Chattanooga, and the N. C. & St. L. to Dalton.

Q. Your answer is the same with reference to that?

A. That is right, the same as No. 1.

Q. Your example No. 8 is from Oneida, Tennessee, to Valley Head, Alabama. What carriers are involved?

A. Southern Railway.

Q. That is the C. N. O. & T. P. from Oneida?

A. That is right.

Q. Down to Chattanooga?

A. Yes, sir.

Q. You have no information about that, I take it?

A. No, sir.

Q. Do you know of any connections there?

A. From Oneida?

Q. To Chattanooga?

A. As I say I can verify that, but I am sure they have connections but in order to give you the exact connections I would have to have an official guide.

Q. Where is Valley Head?

A. That is on the Southern Railway.

Q. The Southern Railway to Birmingham?

*[170]

*A. It is on the Southern Railway just out of Chattanooga en route to Birmingham, I think.

Q. What carriers are involved between Nashville, Tennessee, and Roanoke, Virginia?

A. N. C. & St. L. to Chattanooga, Southern to Bristol, Norfolk and Western to Roanoke.

Q. What carriers are involved in your example No. 10?

A. From Johnson City, Tennessee, to Franklin, Kentucky, it would be the Southern Railway to Chattanooga, N. C. & St. L. to Nashville and L. & N.

Q. The Tennessee Central?

A. Tennessee Central, either one, yes.

Q. (By Mr. Hendley) Mr. Gaffney, on your example No. 7, you show Johnson City to Dalton $5.02. Have you just taken the mileage and multiplied it out, or is that the actual fare as published?

A. That is the actual fare as published.

Q. Do you operate air conditioned cars on your line between Bruceton and Paducah?

A. No, sir, we do not.

Q. Do you operate air conditioned cars on your line between Bruceton and Hickman?

A. We do not. We certainly would be delighted to be able to do so if we had the patronage down there to pay us to do that,

*[171]

and were it possible now to get air conditioned *equipment.

MR. HENDLEY: That is all.

EXAMINER McGRATH: Are there any further questions on cross examination?

MR. MILLER: Yes, I have a few, please.

Q. (By Mr. Miller) Mr. Gaffney, you referred to certain lower fares maintained by certain carriers in 1932 and 1933 as experimental fares to attract additional traffic, travel to the railroads in competition with other forms of transportation, particularly with private automobiles and buses. I assume by that, do I, that you were experimenting to see whether these lower fares would produce a greater total revenue for the railroads?

A. We were really desperate, we thought we were going out of business, and we were just like a dying man grasping at a

straw. We tried to put in a fare to attract them from other modes of travel.

Q. Your purpose was to secure greater total revenues, was that it?

A. That was the purpose, yes, to keep from going out of business.

Q. On December 1, 1933, the carriers in the Southern Region, except the Illinois Central, Mobile & Ohio, and the Frisco, put this 1.5 cent fare in effect. I assume by that that the experiment

*[172]

was something of a success and would produce *a greater total revenues?

A. Let's see, what other period? What period are you talking about, in the first place? What page is that on?

Q. The first question referred to the testimony that you gave relative to the 1932-33 period. You called that the experimental period. My question was as to whether that experiment was for the purpose of determining that the lower fare would produce greater total revenues by attracting this traffic?

A. You are talking now as to the period of April 1, 1933, to November 30, 1933. They were put in by just a few lines in Tennessee.

Q. It was for the purpose of attracting traffic, to see whether your total revenue would increase, is that right?

A. Naturally we hoped so. We hoped it would increase to such an extent that the revenues would increase.

Q. On December 1, 1933, you put them into effect until 1937. By that do I assume this experiment was something of a success?

A. No, it was not a success. We hoped it would be a success, and we continued them on to see if they would attract the travel, but it didn't do it to the extent that it would pay.

Q. Then in 1937 you increased the fare to 2 cents a mile until January 14, 1939. After the later date you reduced it again to 1.5 cents a mile. Why did you do that?

*[173]

A. We were still casting about to see if we could strike a *level of fare to attract the travel.

Q. Which fare produced the greatest total revenue, the 2 cent fare or the 1.5 cent fare, the greatest total revenues?

A. I can't answer you that. If you want our earnings during those years I can give you those. That will perhaps answer the question.

Q. Well, then, in 1937 and 1939 you were still experimenting, is that correct?

A. From November, 1937, to January, 1939, we had the 3 cents per mile in parlor cars and 2 cents in coaches.

Q. Why did you increase it in 1937?

A. Why did we increase it in 1937?

Q. Yes.

A. We found out that the lower fare was not producing what we thought it would.

Q. Why did you lower it again in 1939?

A. Still for the same reason, that it didn't produce like it should.

Q. Well, you mean the 2 cent fare didn't produce, is that right?

A. One minute here.

Q. You had a 2 cent fare in from November 15, 1937, to January 14, 1939. Why did you lower it to 1.5 cents?

A. I can't recall, frankly. We have had so many experiments that I cannot recall why that was done.

*[174]

*Q. You testified this morning that on July 14, 1942, the Southern Passenger Association filed a petition with the Commission for authority to increase their interstate fares. Was a copy of that petition sent to the Price Administrator?

MR. GWATHMEY: Mr. Examiner, I am confident that this particular witness is not familiar with the facts. I was Counsel who filed that petition and I will be very glad to answer the question if Counsel wishes me to do so.

MR. MILLER: I would just as soon have it come from Mr. Gwathmey, if it is all right with the Examiner.

EXAMINER McGRATH: All right.

MR. GWATHMEY: The petition was filed in Docket 26550, Passenger Fares and Surcharges, 214 ICC 174, and it asked that the outstanding order in that proceeding be modified to the extent necessary to enable the carriers to file tariffs publishing the increase. That petition was served upon all parties to Docket No. 26550 as required by the rules. A copy was not officially served upon the Office of Price Administration but upon request by a letter from the Price Administrator he was furnished with a copy.

MR. MILLER: Do you know what the date of that was?

MR. GWATHMEY: I can't recall at the moment.

Q. (By Mr. Miller) This morning you referred to the Commission's decision of February 28, 1936, in Passenger Fares and Surcharges, in which they found the 2 cents fare lawful with

[175]

respect to the country generally. Has there been a change of conditions with respect to the passenger revenues since that decision?

A. What date was that?

Q. February 28, 1936.

A. Change in condition of passenger revenues? Quite a change.

Q. This morning you testified that during the month of August, 1943, there were operated 160 troop trains of the N. C. & St. L. Railway. Can you give me the number of those troop trains which were operated intrastate, in intrastate commerce?

A. I cannot, no, sir. I can get the record for you though, and give it to you right here.

MR. BARHAM: No you can't.

THE WITNESS: I beg your pardon?

MR. AIKEN: It would be a military secret.

MR. MILLER: Wouldn't it be a military secret in respect to the 160?

MR. GWATHMEY: One minute.

EXAMINER McGRATH: Off the record.

(Discussion had off the record.)

Q. (By Mr. Miller) Mr. Gaffney, do you know of any person that is being hurt or injured in any way whatsoever because the Tennessee intrastate fare is maintained at its present level?

A. Any person?

Q. Yes.

*[176]

*A. I know several railroad companies that are being very much hurt by it.

Q. Do you know of any other persons being hurt?

A. I don't know. The accounting witness showed you a record of how badly the carriers in Tennessee—and certainly they need this money, I believe, more than a lot of other carriers where they have this fare in effect.

Q. The railroads are the only persons you know of that are being hurt, is that right?

A. A lot of stockholders of railroads. They are individuals, they are badly hurt.

Q. Do you know anybody besides the railroads and their stockholders that are being hurt?

A. Yes, the public itself.

Q. All right, who in the public is being hurt and how?

A. The interstate passengers, there is discrimination, I think, against them, when they have to pay the high fare and the intrastate passenger pays a lower fare, riding the same time in the same train.

Q. How are they being hurt?

A. I think it is very unfair to them that they should be charged a higher fare for practically the same mileage, where an intrastate passenger is not.

Q. The only way they are being hurt is that interstate pas-

sengers pay one fare, and intrastate passengers the other fare, is

*[177]

*that the only way you know that they are being hurt?

A. It is unfair to them, isn't it, I will say that.

Q. Just the mere fact that they are paying different fares?

A. I don't know, there may be other ways that I cannot think of right now. I don't know of anything else.

Q. Do you know of any localities being hurt or injured in any way?

A. I can't say right now, no, I can't say that I do.

MR. MILLER: That is all.

EXAMINER McGRATH: Are there any further questions on cross examination?

MR. JOURQLMON: Mr. Examiner, I think that parties and the Interstate Commerce Commission are entitled to know this matter with reference to troop movement. By that I don't mean that I think that we are entitled to know details. I don't believe that it is military information as to what proportion of this movemen is intrastate and what proportion is interstate. The carriers prepared "canned" testimony and brought it in here in which they stated, after it had been checked carefully, I assume, by their attorneys, or certainly should have been checked by them, that a certain number of trains had moved in troop movement in August, and that a certain number had moved in September. In addition to that they brought in here other facts with reference to these troop trains which will be shown in the record, at those same points.

*[178]

*The carriers have now refused to give any information as to whether this is an intrastate movement or whether it is an interstate movement. I wish to request a ruling from the Interstate Commerce Commission requiring them to give that information for the record in this case. I don't want any details which could be of any use whatever to the enemy, but there is no man in Germany that doesn't know that troop trains are moving in the

United States from point to point, and that large numbers of them are moving.

Now, the proportions of them that are moving from a point in Tennessee to another point in Tennessee, as compared with those that are moving into Tennessee from outside of Tennessee, or crossing the State, cannot be a military secret, the mere matter of proportions, and that is all that we have asked for.

EXAMINER McGRATH: Let me ask Respondents if they make any point on those military movements as bearing upon the issues here in respect of the petition, alleging violation of Section 13(4) in respect to Tennessee intrastate fares other than to indicate the additional expense to which they are being subjected, whether interstate or intrastate. It might be all interstate, and have the same bearing.

MR. GWATHMEY: I tried to make that very clear this morning, that our purpose in making this reference to military movement was merely to show that the railroads are being subjected to

*[179]

a good deal of extra expense in connection with *interstate as well as intrastate, and as bearing upon the question of the reasonableness of the interstate fares, as well as on the question as to what the reasonable intrastate fare is.

When it comes to undertaking to segregate those movements as between interstate and intrastate I submit that has nothing to do with the case.

MR. MILLER: Mr. Examiner, I think that it has an important bearing to this effect, th carriers are contending that these troop movements burden them with expense. If these movements are interstate commerce, then it is the burden of interstate commerce and not the burden of intrastate commerce that these troop movements are imposing. And the allegation is here that the intrastate fares are the burden upon interstate commerce, and we simply want to find out whether it is the intrastate commerce that is the burden or the interstate commerce that is the burden.

EXAMINER McGRATH: Let me ask Respondents if they are willing to supply that information?

MR. GWATHMEY: No, sir, we are not.

EXAMINER McGRATH: Under the circumstances, the Examiner does not think the matter is of sufficient importance for him to request the Respondents to submit the information. You can appeal from that ruling if you wish to the Commission direct.

MR. MILLER: I would like to move then that no consideration be given to this evidence by Respondents with respect to the added expenses due to troop movements.

*[180]

*EXAMINER McGRATH: Well, that motion is denied.

MR. JOUROLMON: Off the record.

(Discussion was had off the record.)

EXAMINER McGRATH: Have you any further questions?

MR. JOUROLMON: No further questions.

REDIRECT EXAMINATION

Q. (By Mr. Gwathmey) Mr. Gaffney, this morning Mr. Jourolmon asked you whether the Tennessee Commission had any knowledge of the action of the Interstate Commerce Commission when in Ex Parte 148 it authorized the interstate fare to be increased to 2.2 cents per mile. Do you or not have knowledge of the fact that Commissioner Jourolmon of the Tennessee Commission was a member of the special committee of State Commissioners which, under the cooperative plan, sat with the Interstate Commerce Commission throughout the hearings in Ex Parte 148, both the original hearing and reopened proceeding?

A. It is my understanding he was, yes, sir.

RECROSS EXAMINATION

Q. (By Mr. Jourolmon) Mr. Gaffney, do you have any knowledge of the fact that the Interstate Commerce Commission acted on this petition to increase the rate to 2.2 wholly ignoring the cooperating panel of State Commissioners, so that no member of the state panel was called in on that?

A. I have no knowledge of that, no, sir.

Q. Do you have any knowledge that I myself had any infor-

*[181]

nation *with reference to that particular action?

A. I have not. The only thing I know about is press dispatches, to the effect that you sat in on that hearing.

Q. That is right, I sat in on 148 and 148 reopened, but you don't know that I sat in as a cooperating Commissioner with reference to the specific issue involved here, which is the 2.2 cents fare in the south?

A. That is right.

Q. As a matter of fact now, Mr. Gaffney, don't you know this, that the petition of the carriers to increase these fares to 2.2 was originally a separate docket of the Commission, bearing a separate docket number from Ex Parte 148?

MR. GWATHMEY: I made a statement on that point awhile ago in answer to Mr. Miller.

Q. (By Mr. Jourolmon) Don't you know further that the Commission of its own motion, without consulting with the cooperating Commissioners or anybody else, simply embodied that into Ex Parte 148, and there was no opportunity to be informed on it?

A. I do not know that.

EXAMINER McGRATH: Wasn't the Commission's order in Ex Parte 148 in fact served on all of the State Commissions?

MR. JOUROLMON: Yes, 148 was, but not this two twenty.

MR. MILLER: I can perhaps explain that.

EXAMINER McGRATH: As I understand it, by the Commission's order entered January 21, 1942, in Ex Parte 148, the

*[182]

Commission *originally approved a proposed uniform increase of 10 per cent in all passenger fares.

MR. JOUROLMON: Correct.

EXAMINER McGRATH: That approval was given pursuant to the order of investigation which it entered in Ex Parte 148?

MR. JOUROLMON: That is correct.

EXAMINER McGRATH: And after hearing?

MR. JOUROLMON: That is correct.

MR. MILLER: That was when the rate was increased to 1.65.

EXAMINER McGRATH: Oh, I see.

MR. JOUROLMON: And I participated, let the record show that I participated in that, and that the cooperating State Commissioners by a majority vote, myself and two others dissenting, recommended that that 10 per cent increase be granted.

EXAMINER McGRATH: What was the Southern Carriers petition of July 14, 1942, was that the one you say was not served on you?

MR. JOUROLMON: That is right. So far as I know we have never received that petition.

MR. GWATHMEY: Mr. Examiner, may I say that this matter you are discussing now is one of the things covered pretty fully in the petition filed by the OPA and the answer which the railroads filed to that petition which I asked this morning to have made a part of the record by reference and to which Counsel

*[183]

agreed. If you will read that petition and answer you will *get all of the facts in this connection except of course as to what may have gone on between the Interstate Commerce Commission and Mr. Jourolmon, I don't know about that.

MR. JOUROLMON: Off the record.

(Discussion was had off the record.)

EXAMINER McGRATH: Have you finished?

MR. JOUROLMON: Yes, sir.

Q. (By Examiner McGrath) I want to ask you these few questions, Mr. Gaffney, because it is not quite clear to me yet what specifically is in issue here with respect to the fares in parlor or sleeping cars. Now, let's take first the one-way fare which is in issue. What has been done, if anything, with respect to that fare by the Tennessee Commission, that you are complaining of here?

A. The Tennessee Commission has denied the increase.

Q. That increase was from 3 to 3.3 cents per mile, was it?

A. That is your one-way fare.

Q. I am talking about the one-way fare in parlor or sleeping cars.

A. Just the coaches are involved in the one-way fare.

Q. I want to know about the fare in parlor or sleeping cars, one-way fare, is there such a thing as that, intrastate parlor or sleeping car fare in Tennessee?

A. Round trip, yes.

Q. There is no one-way?

*[184]

*A. There is a one-way fare at 3.3.

Q. As to that the Tennessee Commission has authorized the Respondents to increase, to make the increase corresponding to the interstate increase, isn't that right, in the one-way parlor car, parlor or sleeping car fare? That point is not clear at all.

A. No. Mr. Examiner, as I said this morning, I am not a rate man. I have a rate man here that I would like for you to question on any of those points you wish.

MR. GWATHMEY: Mr. Examiner, I will be glad to answer the question for you if you want me to.

EXAMINER McGRATH: We ought to have somebody here that is qualified to answer that as a witness.

MR. GWATHMEY: Very well. We have got two or three.

THE WITNESS: Chairman Duggan can answer it.

MR. GWATHMEY: All right.

EXAMINER McGRATH: I will say your position is not entirely clear on that either. It discusses principally the coach fares up to a certain point, and then goes into the round trip parlor car fares.

THE WITNESS: Mr. Examiner, I would want to put Mr. Bowman on the stand, our chief rate clerk.

EXAMINER McGRATH: There are a couple of more questions that you are perhaps qualified to answer. Can you answer

this question: With respect to the data shown by Mr. Tassin in
*[185]
his *Exhibit No. 6, statement No. 1, as to the revenues, are the loss of intrastate revenue by the NC&StL for those three periods, can you answer this question, whether it could be reasonably expected that the increase in the fares sought by the Respondents would have produced or would be likely to produce this increased revenue, if they were charged?

THE WITNESS: More than likely.

Q. (By Examiner McGrath) What is your answer to that?

A. Yes.

Q. What do you base that answer on?

A. In other words, Mr. Examiner, if the people travel, that little difference will not keep them from traveling on our trains. We know had that number of people traveled, with that higher fare, we would have had that much.

Q. It would not have diverted them to other means of transportation?

A. No, because other means of transportation are crowded to the very guards, just like we are in some cases.

Q. Can the same information be supplied with respect to the other carriers through some qualified witness?

A. Mr. Aiken of the Southern Railway is here.

MR. GWATHMEY: We haven't got a passenger traffic man from each of the railroads here. Mr. Aiken, the passenger man for the Southern Railway will be the next witness. I don't think
*[186]
there are any other representatives of the passenger departments of the Tennessee Railroad present.

EXAMINER McGRATH: Not for the Louisville & Nashville?

MR. GWATHMEY: No, sir.

MR. MILLER: There is for the Southern.

MR. GWATHMEY: I have already stated that.

Q. (By Examiner McGrath) There is one other question in that connection I wanted to ask you, and that is this, do those figures set forth on page 3 of Exhibit 6, statement No. 1, include

any allowance for loss of revenue due to diversion of passengers from interstate to intrastate routes?

A. I don't know.

Q. Or the payment of fares over intrastate routes plus the interstate rate beyond?

A. I can't answer that.

Q. Such as you illustrated in your Exhibit No. 2? You can't answer that?

A. No, I can't say.

EXAMINER McGRATH: Perhaps Mr. Tassin can fix that.

MR. GWATHMEY: Mr. Examiner, I was unable to follow your question because there was so much noise. Did you ask me a question?

EXAMINER McGRATH: No, I asked this gentleman a question.

THE WITNESS: About Mr. Tassin's figures. I would rather Mr. Tassin would answer.

MR. MILLER: May I ask one question in continuation of what

*[187]

you asked the witness?

EXAMINER McGRATH: Yes.

MR. MILLER: Is the fact that there will be no diversion of traffic because of the increased intrastate fares due at least partly to the present war conditions?

THE WITNESS: Ask that question again.

EXAMINER McGRATH: He will read it for you.

(The question was read.)

THE WITNESS: I can't say. There will be some diversion naturally, but not enough to affect it very much.

MR. MILLER: I thought you just testified there would be no diversion.

THE WITNESS: Sir?

MR. MILLER: I thought you just testified there would be no diversion.

THE WITNESS: Practically no diversion, I said.

MR. MILLER: Is that due to the present war conditions?

THE WITNESS: It is due to the fact that people have sufficient funds with which to ride the better accomodations, and naturally they will ride the railroads.

MR. MILLER: That is due to the war?

THE WITNESS: Not necessarily due to the war.

MR. MILLER: I will not pursue it any further.

EXAMINER McGRATH: Are there any further questions of this witness? You may be excused.

*[188]

*(Witness excused.)

EXAMINER McGRATH: Is Mr. Tassin here?

J. S. TASSIN

having been previously sworn, testified further as follows:

DIRECT EXAMINATION

Q. (By Examiner McGrath) Mr. Tassin, witness Gaffney testified at some length with respect to the possibility of breaking down interstate fares by purchasing a combination of intrastate fares at the lower fare in effect, intrastate rate in Tennessee, plus the interstate fare beyond, and indicated that there would be a resulting loss in revenue to the carriers from that. He also testified that these differences in fares would be likely to bring about a diversion of passengers from interstate routes to intrastate routes to some extent. I want to ask you with respect to that Exhibit, statement No. 1, your Exhibit No. 6, whether the figures of loss in intrastate revenue stated there or shown therein include any amounts for that loss of revenue that I have just described, resulting from diversion from interstate to intrastate routes, and the impairment of interstate fares by purchase of combination of fares?

A. Automatically, a man traveling on two tickets, one interstate—

Q. That is not my question now. My question is whether these figures include any estimated loss for that, on that account?

A. No separate estimate on that account.

*[189]

*Q. No separate estimate, no, do they include that loss in any amount?

A. Wherever such a condition occurred, yes.

EXAMINER McGRATH: That is all I have.

CROSS EXAMINATION

Q. (By Mr. Jourolmon) You say wherever that loss occurred they did include them?

A. Yes.

Q. Where did you get your information as to where such losses occurred?

A. Because these figures are computed on the basis of tickets moving intrastate, and how much additional would have been received by the railroads had it been on the interstate basis.

Q. What was the source of your information as to how many of them violated—how many violations occurred?

A. We don't know that there were any violations. We simply know these figures are computed on the basis of tickets, and where you have two tickets, we have used the intrastate tickets here as the basis of these losses, irrespective of who turned that ticket in. We don't know who turned the ticket in.

Q. In other words, it would be included?

A. Automatically.

Q. Automatically in that figure?

A. Yes.

EXAMINER McGRATH: Yes, that is clear. Are there any

*[190]

*further questions of this witness?

MR. GWATHMEY: No.

EXAMINER McGRATH: The hearing will be recessed until 9:30 o'clock A.M. tomorrow.

(At 4:30 o'clock, P.M., on Thursday, December 2, 1943, a recess was taken until 9:30 o'clock, A.M., on Friday, December 3, 1943.)

*[191]

*Andrew Jackson Hotel
Nashville, Tennessee
Friday, December 3, 1943

Met pursuant to adjournment at 9:30 a.m.

BEFORE: J. P. McGRATH, Examiner.

APPEARANCES: (As heretofore noted.)

PROCEEDINGS

EXAMINER McGRATH: The hearing will be resumed.

MR. CLARK: Mr. Aiken, will you take the stand, please?

E. N. AIKEN, being first duly sworn, testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Clark) Will you give your name and city of your residence, and what railroad connection you have, please?

A. E. N. Aiken, Atlanta, Georgia, assistant passenger traffic manager, Southern Railway System Lines.

Q. How long have you held that position?

A. For about fifteen years.

Q. Prior to that time has your business career been with railroads, and in passenger departments?

A. Yes, sir.

Q. At least for thirty years?

A. I took service with the Southern Railway System August 1, 1902, and prior to that I was with the New York Central Rail-

*[192]

*road for several years.

Q. That is enough.

A. All of it has been in passenger traffic service.

Q. Have you had at my request prepared an exhibit in which you have shown opportunities to defeat the through interstate rates by using the intrastate rate in Tennessee?

A. Yes, sir.

MR. CLARK: I have before me, Mr. Examiner, a two-page exhibit which I will distribute and ask that it be marked Exhibit No. 7.

(Exhibit No. 7, Witness Aiken, marked for identification.)

Q. (By Mr. Clark) Was that exhibit prepared under your direction?

A. Yes, sir.

Q. Is it true and correct?

A. To the best of my knowledge, yes sir.

Q. It might be well to describe at least one of the examples to show how it works; select one of them, please, and describe it.

A. With the present differences between the intrastate and the interstate fares, it is possible to defeat the published interstate fare to, and from points in Tennessee, by purchasing an intrastate ticket for a part of the trip.

Looking at example No. 7, or item No. 7 of the exhibit, the published interstate one-way coach fare from Johnson City to

*[193]

*Birmingham is shown as $7.89. It is possible to purchase a one-way coach ticket from Johnson City, Tennessee, to Chattanooga at the intrastate fare of $3.65 on the basis of 1.65 cents per mile, and re-purchase or pay cash fare on the train from Chattanooga to Birmingham at the interstate fare of $3.19 on the basis of 2.2

cents per mile, or a total expenditure of $6.84, thus defeating the through published interstate fare by $1.05.

Q. Now, are the other examples on the exhibit similar so that they can be readily understood from that explanation?

A. Yes, sir; they are self-explanatory. And, incidentally, these are just given as illustrative and they could be multiplied many, many, many times.

Q. Let's take one in the reverse direction. This is not on your exhibit, but let's take a passenger from Birmingham, Alabama, to Bristol, Tennessee. There is an opportunity where your traveler would buy to Chattanooga, Tennessee, and that would be an interstate movement?

A. Yes.

Q. He would leave the train there and continue his journey, and from Chattanooga to Bristol he would buy at the Tennessee rate—that would be open to him?

A. Yes, sir.

Q. He could do that?

A. Yes, sir.

*[194]

*Q. In a case like that, there would be two different conductors, there would be two different movements, there would be no way that you could catch it, but still the total effect would be that you are defeating the interstate rate from Birmingham to Bristol, Tennessee?

A. That is correct, sir.

Q. Now, did you, at my request, prepare another exhibit comparing the interstate and intrastate movements—that is to say,

between points of comparable mileage, and showing the rate for one versus the rate for the other?

A. Yes, I have.

Q. Is that a one-page exhibit which I now hand you marked Exhibit No. 8?

A. Yes, that is right.

(Exhibit No. 8, Witness Aiken, marked for identification.)

Q. Is that true and correct to the best of your knowledge and belief, sir?

A. It is.

Q. Give us one example off of that exhibit, please, and make it illustrative.

A. Yes, sir. Refer please to item No. 1. The distance from Chattanooga to Macon, Georgia, Mr. Examiner, an interstate trip, is 240 miles, and the fare is $4.95. The distance from Chattanooga, Tennessee, to Bristol, Tennessee, an intrastate trip, the

*[195]

distance is 242 miles, or two miles greater, and the *fare is $4.00, showing a difference of 95 cents.

Q. Is that Item 1 you are talking about?

A. Yes, sir.

Q. It shows on the face of the exhibit?

A. Yes, sir.

Q. There you have selected those origins and destinations because one is 240 miles and the other is 242 miles?

A. Correct.

Q. And are therefore nearly the same?

A. Yes, sir.

Q. I appreciate, Mr. Aiken, and I don't expect you to know the names of a single passenger that might have traveled between any one of the origins and destinations shown on Exhibit No. 8, but I will ask you whether or not from your familiarity with passenger conditions generally in Southern Territory, whether you would say there are passengers who from time to time travel between these origins and destinations?

A. Oh, yes.

MR. MILLER: I would like to object to that question unless the witness is able to state that he knows of these evasions from his own personal observation.

EXAMINER McGRATH: These are not evasions, Mr. Miller.

MR. MILLER: Well, if he knows of these instances, I will call them, of his own personal knowledge. In other words, I object

*[196]

to the question as not being sufficiently qualified to exclude hearsay.

MR. CLARK: That may go to the weight, but not to the admissibility.

MR. MILLER: I have always understood hearsay evidence was not admissible.

EXAMINER McGRATH: Give us the basis of your answer to that question, Mr. Aiken.

MR. CLARK: Mr. Examiner, you will recall I started out in order to avoid that objection.

Q. (By Mr. Clark) Now, will you go over it again at a little more length, how it is you happen to know there are people traveling generally in Southern Territory?

A. As I stated, my experience—

EXAMINER McGRATH: Well, from and to these points, isn't that the question?

MR. CLARK: These are in Southern Territory.

EXAMINER McGRATH: As illustrative?

MR. CLARK: Yes, sir.

Q. (By Mr. Clark) Let's see, Mr. Aiken, how long have you been assistant passenger traffic manager?

A. About—

Q. Fifteen years?

A. Just about that.

Q. And your office and headquarters are in Atlanta, Georgia?

A. Correct, sir.

*[197]

*Q. That is not quite—or a little better than halfway between Chattanooga and Macon?

A. A little better, yes sir.

Q. Have you had occasion in these fifteen years to travel to Chattanooga?

A. Yes, sir.

Q. How about going to Macon?

A. Yes, sir.

Q. Did you find persons traveling on the train?

A. Yes, sir.

Q. Does the Southern Railway run a number of trains between Chattanooga and Atlanta?

A. Yes, sir.

Q. How about between Atlanta and Macon?

A. The same thing.

Q. Are those trains run light, with no passengers?

A. At the present time they are running very heavy.

Q. Would you like to have more cars to put on those trains?

A. Very much.

Q. As a result of that would you say it is a fair and reasonable conclusion that passengers are still traveling between Chattanooga and Macon?

A. Yes, sir.

Q. Would similar questions about between Chattanooga and Bristol and the other points be answered similarly?

*[198]

*A. It would be so, yes sir.

MR. CLARK: I think that is sufficient.

EXAMINER McGRATH: The objection is overruled.

Q. (By Mr. Clark) Now, Mr. Aiken, turn back, please, to your Exhibit No. 7. This is where you show the opportunities to defeat the through rate. Now, I want to ask you again, based on your experience and on your own travel and the disposition of travelers in such situations, would you tell us whether or not persons traveling do avail themselves of the opportunity to cut through interstate fare?

MR. MILLER: May it be understood, I have an objection, continuing objection to this line of testimony?

EXAMINER McGRATH: No, you had better renew your objection.

MR. MILLER: I object then to the question.

EXAMINER McGRATH: Answer the question.

Q. (By Mr. Clark) Go ahead, Mr. Aiken.

A. My experience dates over a great many years, as I have just testified, as to my experience. I have occupied almost every position in the passenger traffic department from traveling passenger agent, clerk, and so forth, and there is no question but what the traveling public will and does take advantage of all of the opportunities to save money. If the tradition in East Tennessee is as true today as it used to be, I think it is very prevalent that over there they will try to save money. It has been stated

*[198]

that they can beat the Scotch over in East *Tennessee.

MR. JOUROLMON: Are you talking about my section of the state?

THE WITNESS: A very fine section, too, but I don't believe there is any reason why the public would not take advantage of it when it is there in front of them, particularly when they can go to these larger distributing centers such as Chattanooga. Take one of the examples I gave you—from Johnson City, the train service is such that it is a very simple thing for a man to buy to Chattanooga. He can get off, spend twenty or twenty-five minutes and buy a new ticket or stay on the train, occupying the same seat that he occupied into Chattanooga and pay the conductor the same total fare, because there are no penalty charges on our coach fare collections.

Q. (By Mr. Clark) From your experience in dealing with the traveling public, would you say there is a ready disposition on the part of such travelers to avail themselves of such opportunities?

MR. JOUROLMON: I object to that question.

MR. CLARK: On what grounds?

MR. JOUROLMON: I object to that question on the ground that it is a deliberate slight on human nature, and not only that, but the members of the Commission have as much knowledge of human nature as this witness or any other witness around here.

*[199]

You are simply asking him to impugn the essential *goodness—

EXAMINER McGRATH: Are you willing to stipulate that?

MR. JOUROLMON: No. I am perfectly willing to stipulate that the members of the Commission know human nature, yes.

MR. CLARK; I am putting it considerably beyond the knowledge of human nature. This is one of the peculiarities of human nature that goes to travelers on passenger trains.

MR. MILLER: I would like to point out this line of testimony is based on the presumption they will violate the law.

MR. CLARK: We haven't said anything about violating the law, we haven't imputed anything wrong to any citizen of Tennessee, or in any state.

MR. JOUROLMON: I may just point out this fact, that if a passenger is traveling interstate, he is under legal obligation to pay the interstate fare. It may not be possible for the railroads to enforce it, I don't know, but nevertheless you are imputing a violation of a law by the person who does it.

MR. CLARK: If it is an imputation, let it impute, that is all I have got to say. I am proving the fact now.

MR. JOUROLMON: There is an objection here, Mr. Examiner.

MR. CLARK: Pardon me.

EXAMINER McGRATH: The objection is overruled.

Q. (By Mr. Clark) Now, Mr. Aiken, in respect of the question that arose here yesterday afternoon as to a proper under-

*[201]

*standing of the order of the Commission of Tennessee, I want to bring you back to that. We told the Examiner that we would clear that up. There was a little misunderstanding, you will remember. So now let me ask you please tell us what the tariffs that were filed with the Tennessee Commission undertook to do, what change in the passenger rate was undertaken. You understand we don't have to file a petition with the Commission, we file our tariffs, but still I want you to tell us what those tariffs proposed to do. Start first with the coach fares.

A. I want to refer to this memorandum to get the figures correct.

EXAMINER McGRATH: If you are giving that information for my benefit, I think the record is fairly clear as to the coach fare.

MR. CLARK: It is simply—if we just begin at the start, it won't be long. That is where we got into our confusion.

Q. (By Mr. Clark) Take coaches first.

A. When our tariffs were filed with the Tennessee Commission, they purported to establish effective as of December 1st a coach fare on the basis of 2.2 cents per mile.

EXAMINER McGRATH: One way, that is?

THE WITNESS: One way. And it was the same fare that is in effect for interstate traffic as authorized by the Interstate Commerce Commission.

Q. (By Mr. Clark) That was the year 1942?

*[202]

*A. That was on October 1st, 1942.

Q. You said December.

A. I meant December 1st, 1942; they went into effect October 1st, 1942, for interstate.

Q. I am not worrying about the effective date. You changed 1.65 to 2.2 in coaches one way?

A. Yes, sir.

Q. What did you do about the round trip in the same tariff?

A. In lieu of the fifteen-day limit fare and the six-month limit fare, we endeavored to establish a three-month limit fare on the basis of 1.98 cents per mile.

Q. You said the fifteen-day and six-month; didn't you mean sixty-day?

A. I mean sixty-day.

Q. In lieu of the fifteen-day and the sixty-day, you set out to put in one round-trip limit of three months at what rate?

A. 1.98.

Q. 1.98?

A. Yes, sir.

EXAMINER McGRATH: In lieu of what?

THE WITNESS: In lieu of the fifteen-day limit fare, which was 1.485 cents per mile, and the sixty-day limit, which was double local or 1.65 cents per mile.

Q. That tells us what you had and what you proposed to do as to coaches?

*[203]

*A. That's right.

Q. Now, to your Pullman, what did you propose to do in lieu of what?

A. We endeavored to establish a three-month limit there on the basis of 2.75 cents per mile in lieu of a thirty-day limit fare on the basis of 2.475 per mile, and the six-month limit fare on the basis of 2.75 per mile.

Q. Those were round trips that you were eliminating, and substituting one round trip?

A. Yes, sir.

Q. Was there any change made in the one-way Pullman?

A. No, sir.

Q. What was that fare then?

A. 3.3 cents per mile.

Q. And it was to remain at that?

A. Yes, sir.

Q. Those tariffs were the tariffs that were rejected by the Tennessee Commission, is that right?

A. Yes, sir; they were suspended first, and then a hearing had.

Q. Then that threw back into effect the rates that you have described which you proposed to change?

A. Correct.

Q. Now, are those rates still in effect in Tennessee today?

A. Yes, sir.

MR. CLARK: And this petition, Mr. Examiner, is aimed at

*[204]

*those rates.

EXAMINER McGRATH: And if I understand you correctly, the present intrastate one-way Pullman fare in Tennessee is the same as the interstate?

THE WITNESS: Correct.

MR. CLARK: 3.3?

THE WITNESS: Correct.

MR. GWATHMEY: You said "Pullman fare." You mean "fare in Pullman cars"?

EXAMINER McGRATH: That is what I mean.

THE WITNESS: Of course, it doesn't include the space rate in the Pullman car.

MR. CLARK: Does that clear it up, Mr. Examiner?

EXAMINER McGRATH: Yes.

MR. CLARK: We offer Exhibits 7 and 8.

Q. (By Mr. Clark) Mr. Aiken, it is suggested perhaps I might also ask you about this map that has been filed which shows the Southern Railway and other lines in the State of Tennessee.

A. I understand that it does.

Q. Perhaps I should ask you to explain what other states in Southern Territory the Southern System Lines operate in, or perhaps you could just say in some general way.

A. We operate in all of the states in the South, and all of the gateways, and all of the ports with the exception of perhaps a *[205]
few over in the East, like Wilmington, and the Florida *ports other than Jacksonville.

Q. South of Ohio and the Potomac Rivers?

A. South of the Ohio and Potomac Rivers and east of the Mississippi River.

Q. And east of the Mississippi River. The Southern Railway operates in all the Southern States?

A. Correct.

Q. Serves the principal cities, river points, and ports?

A. Yes, sir.

Q. Except those you named?

A. Yes, sir.

MR. CLARK: I think that is all. May our exhibits be received?

EXAMINER McGRATH: Exhibits 7 and 8 are received in evidence.

(Exhibits 7 and 8, witness Aiken, received in evidence.)

MR. CLARK: Cross-examine.

CROSS-EXAMINATION

Q. (by Mr. Jourolmon) Mr. Aiken, does the Southern Railway have a police department?

A. Yes, sir.

Q. Is it a pretty sizeable police department?

A. I don't know the exact number of its personnel, but I think it is a pretty good size, yes sir.

Q. Has the police department ever made any attempt to ferret
*[206]
*out people who steal from the railroad?

A. You are asking me something—I am not a policeman, I don't know. I imagine that is part of their duties, but I don't know.

Q. In the passenger line do you know whether the police department has ever made any attempt to find out people who have stolen from the railroad by means of defeating these interstate rates?

A. No, I do not.

Q. Have you ever made any request that the police officers of the Southern Railway ride your trains and attempt to catch people who are doing this?

A. No, sir, we have not.

Q. Have you ever prosecuted any person in your jurisdiction of the various states that you are in—

MR. CLARK: Mr. Examiner, this witness doesn't prosecute anybody. He is not the police department and I object to the cross-examination. It is not proper cross-examination.

EXAMINER McGRATH: I think he is able to answer that.

MR. CLARK: The witness hasn't gone into any of that on direct, and there is no reason for dragging it out on cross-examination, even if he was qualified.

EXAMINER McGRATH: What is your answer? Did you answer fully that last question?

THE WITNESS: I don't know as I knew what the last question was.

[207]

EXAMINER McGRATH: Read it.

MR. JOUROLMON: I don't know that I had finished it.

(The question was read.)

MR. CLARK: There is an objection to that. Let's wait for a ruling.

EXAMINER McGRATH: The objection is overruled.

MR. JOUROLMON: I will finish the question, then.

Q. (By Mr. Jourolmon) Have you ever prosecuted anybody?

A. No, sir.

Q. For this sort of a violation?

A. As a matter of fact, Mr. Jourolmon, I have never prosecuted anybody at any time, civil or otherwise.

Q. In speaking of "you" I am really referring to you as the Southern Railway, I don't mean just you individually, but your department of the Southern Railway—has that ever prosecuted anybody?

A. To the best of my knowledge, I believe that they have not, sir.

Q. Mr. Aiken, do you know what this paper is (indicating)?

A. I would think so, yes.

Q. What is it?

A. It is an annual pass.

Q. Of what railroad?

A. Southern Railway.

*[208]

*Q. Issued to whom?

A. Issued to Leon Jourolmon, Jr., Commissioner of the Railroad and Public Utilities Commission, Nashville, Tennessee.

Q. Do you know whether Mr. Jourolmon is an East Tennessean?

A. Sir?

Q. I say, do you know whether Mr. Jourolmon is an East Tennessean?

A. I do not, sir.

Q. Do you know whether he is of Scotch ancestry?

A. I do not, but if he is, he has got the same as I have.

Q. With this pass in my possession would it be possible for me to make a trip from Chattanooga, Tennessee, to Cincinnati, Ohio, and defeat the provision of this pass which provides that it is not good for any part, even for that part within the state, of an interstate journey in Tennessee; and if so, by how much?

MR. CLARK: I object to that question, Mr. Examiner, because the witness is asked to determine a question of law. I don't think it is appropriate. He can ask all the facts he wants to. If he wants to say, if by the use of this pass to a certain point, if he had to go beyond, he can tell what the fares might be, but a question like that is wholly improper.

MR. JOUROLMON: The objection is well taken.

EXAMINER McGRATH: Do you want to qualify your question?

MR. CLARK: He can argue all that he wants to.

*[209]

*MR. JOUROLMON: Therefore, I can rest that.

Q. (By Mr. Jourolmon) Would it be possible for me to travel from Chattanooga, Tennessee, to Cincinnati, Ohio, using my pass to Oneida, Tennessee, and then paying the conductor the fare from Oneida, Tennessee, to Cincinnati, Ohio, and if so, by how much would the railroad suffer or lose?

MR. CLARK: Have you the tariffs?

THE WITNESS: I don't know whether I have the Oneida figures or not.

Q. (By Mr. Jourolmon) Isn't that on your exhibit?

A. Yes. I wanted to be sure it was, myself. Mr. Jourolmon, I will answer you by saying that the pass on its face says it is only good for an intrastate trip, and you are a public servant. I think the conductor would say to you, "Mr. Jourolmon,"—

MR. CLARK: Wait a minute. He only asked you—answer the question. You are getting over your head. He asked you if he could use the pass to Oneida. Well, that is within the State of Tennessee.

THE WITNESS: He could use the pass.

MR. CLARK: That is perfectly obvious.

THE WITNESS: That is right.

MR. CLARK: He wants to know the ticket rate from Oneida on to Cincinnati, and then he wants the ticket rate from Nashville

*[210]

or Knoxville or somewhere on to Cincinnati. If you *have that data, give him the figures. That is all he wants.

THE WITNESS: That's all right.

MR. CLARK: What he can do, you have no way of knowing.

THE WITNESS: No, I don't know. He could use the pass to Oneida, Tennessee, and the fare from Oneida is $4.77 on that movement. The through fare from Chattanooga to Cincinnati is $7.55.

MR. MILLER: The witness is certainly qualified to know what this pass means.

EXAMINER McGRATH: Well, is that question of any materiality here? I don't see the materiality of it.

MR. JOUROLMON: I am not going to pursue this very much further, but I do want the record to show that the same thing could be done with reference to every one of these instances which you show here which would be possible.

MR. CLARK: The question is simply this, and I will very gladly stipulate if Mr. Jourolmon wishes to use his intrastate pass in lieu of a fare intrastate, that is his privilege, it is up to him, and it would be the same in dollars and cents as what is shown in that exhibit, or whether he used his pass. There is no use to pursue it further with the witness.

MR. JOUROLMON: All right.

Q. (By Mr. Jourolmon) That would be possible?

A. Yes, sir.

Q. And that is just exactly the same thing as your exhibits

*[211]

*show?

A. The only distinction or difference is that the ticket itself does not, the intrastate ticket does not carry any such qualifying clause as is on that pass.

Q. In other words, it is not printed on an intrastate ticket?

A. That is correct.

Q. That it is not good—

A. For any part of an interstate journey.

Q. —for any part of an interstate journey?

A. That is correct, that is right.

Q. Is there any regulation that prevents the Southern Railway from printing that on each ticket?

A. It would be unnecessary because in many of our states the intrastate fares are exactly the same as they are in interstate fares.

Q. In Tennessee they are not. So what would prohibit your printing that on the tickets?

A. I don't think we could print it on there, because I think the man could use it any place he wished to use it. It is a valid fare under the law, the fare from Johnson City to Chattanooga is a published fare, there is no reason why we should say he could not use it to some other place if he wanted to.

Q. Are you testifying that it is a valid fare even if he is making an interstate trip?

*[212]

MR. CLARK: I object to that.

MR. JOUROLMON: That is what he just testified.

THE WITNESS: I didn't.

MR. JOUROLMON: He says it was a valid fare.

EXAMINER McGRATH: That is a matter of argument, I think, Mr. Jourolmon.

MR. JOUROLMON: Mr. Examiner, he has made a statement here and I certainly would have the right to ask him if that is what he meant.

EXAMINER McGRATH: Answer that question.

THE WITNESS: It is a valid fare in the State of Tennessee, yes sir.

Q. (By Mr. Jourolmon) As an intrastate fare?

A. An intrastate fare.

Q. Then what would prevent the carrier from saying that it is not a valid fare for an interstate passage and printing that right on the ticket?

MR. CLARK: Mr. Examiner, again I object to this line of cross-examination because how can the railroad assume that someone is going to do something that Mr. Jourolmon is indicating is unlawful? We can sell a ticket from Chattanooga to Bristol and there is no reason to say you shall not use it between Knoxville and somewhere else. It is simply between two points. That is all you have put on it, that is all it says. We cannot assume somebody is going to violate the law.

[213]

EXAMINER McGRATH: Do you think the placing of such—

MR. CLARK: Immaterial and irrelevant.

EXAMINER McGRATH: —a notation on the ticket would be effectual in avoiding that practice?

MR. JOUROLMON: That is the point that he originally made.

THE WITNESS: You want me to answer the question?

EXAMINER McGRATH: Yes.

THE WITNESS: I don't think it would have any effect at all, Mr. Examiner. We will use this very same example I have given you from Johnson City to Chattanooga en route to Birmingham. The passenger would buy this ticket, and if he was disposed to use it in an interstate journey, there would be no way in the world that the conductor, which is a new conductor who comes on the train of the AGS, to know how he got into Chattanooga. He could simply go on through.

MR. JOUROLMON: On this point, Mr. Examiner, I think it has become necessary for us to retrace what happened. On this examination I first asked him whether it could be done, and he said yes it could be done, because, because of the fact that the tickets don't have on them the same thing which is on my pass.

MR. CLARK: He didn't say any such thing, Mr. Examiner. I differ with you.

MR. JOUROLMON: That is what started this whole thing, and so I merely asked him why they didn't put it on the tickets.

*[214]

*Now he is coming back to say it wouldn't make any difference if we did.

MR. CLARK: You have misquoted the witness all the way through.

MR. JOUROLMON: The record will show that is exactly what happened.

EXAMINER McGRATH: The record will show what the facts are, and what the testimony is, at least.

Q. (By Mr. Jourolmon) Have you any information with reference to any passenger who traveled from Chattanooga, Tennessee, to Cincinnati, Ohio, stopping at Oneida and purchasing an interstate ticket only from Oneida?

A. I have not.

Q. Have you ever talked with any conductor on any one of those trains on which that could be done?

A. Not in that particular instance, no sir.

Q. Is Oneida a point where tickets are sold in the station, or at which people get on the train and pay the fares to the conductor?

A. Both.

Q. By that do you mean that you have an office which is open certain hours and not open other hours?

A. I am not sure of the hours, Mr. Jourolmon, that the office is open, but it is a ticket agency where tickets are sold, and if the

*[215]

agent is on duty he will sell tickets if he is applied *to for them; if not, they can board the train and pay the cash fare on such trains as stop at that point.

Q. Are those trains all through trains, or is there a change of trains involved in that illustration?

A. They are through trains, sir.

Q. Now, your second illustration from Chattanooga, Tennessee, to Washington, D. C., you say a passenger could buy a ticket from Chattanooga, Tennessee, to Bristol, Tennessee. Where would the train stop to let that man off in Bristol, Tennessee?

A. At Bristol.

Q. Where is the station in Bristol?

A. The station is about forty feet over beyond the Virginia line, as I remember, forty or fifty feet.

Q. Therefore, you cannot sell a ticket to Bristol, Tennessee, but you have to sell a ticket to Bristol, Virginia?

A. We sell it to Bristol, Tennessee. Bristol, Tennessee, is the point.

Q. Do you do that voluntarily?

A. Mr. Jourolmon, if my recollection serves me correctly, we did it at the request of the Tennessee Railroad and Utilities Commission when Mr. Hannah was chairman.

MR. HENDLEY: I never heard of it.

MR CLARK: Do I understand the Commission now suggests we should file the interstate rates? You do not want the intra-
*[216]
state rate? I would like for you to put that on the *record.

THE WITNESS: So would I.

MR. CLARK: We would be very glad to have that indicated.

THE WITNESS: It is just across the street, as you know.

MR. JOUROLMON. Yes, it is just across the street. It is news to me. I have always paid my fare rather than use my pass to Bristol, because I regarded that as an interstate trip. I am just learning it is an intrastate point. Is that correct, it is an intrastate point?

MR. CLARK: Physically the station is on the Virginia side, but as I have understood it, your Commission wished us to treat it as intrastate, Chattanooga to Bristol. That has always been my understanding. I want to be very frank, if you gentlemen wish the interstate application we can change it very quickly.

THE WITNESS: As a matter of fact, it is carried as "Tennessee-Virginia" in our tariffs.

MR. CLARK: It is a very puzzling situation.

MR. JOUROLMON: I was thoroughly puzzled myself. I didn't know that that had happened. It is something that happened before I was on the Commission, and it was quite a surprise to me.

MR. CLARK: The station is just across the state line. The track runs up the middle of the main street in town. It is a very

*[217]

embarrassing situation to passengers, but that is the only *station we have. It would be rather absurd to maintain two passenger stations, one on one side of the street and one on the other, and we have dealt with it in a practical way. Again I say if you wish it handled differently, we can arrange it.

EXAMINER McGRATH: Have you finished that line of questioning?

MR. JOUROLMON: Yes, I am satisfied now that I have found out the facts, but I thought it was being handled differently.

Q. (By Mr. Jourolmon) That would be on a change of railroads, but on through trains?

A. Yes, sir.

Q. At Bristol you connect with the N. & W.?

A. Yes.

Q. Have you any information as to whether this violation or this evasion or this defeating of the railroads' proper fare has ever taken place?

A. No, no personal knowledge, no sir.

Q. That would apply also with reference to your Chattanooga and Lynchburg illustration, your Knoxville to Memphis, your Knoxville to Washington, your Knoxville to Richmond, Johnson City to Birmingham, Johnson City to New Orleans, and Johnson City to Memphis, Memphis, Tennessee, to Chattanooga, Tennessee, Athens, Tennessee, to Washington, D. C., and Athens, Tennessee, to Lynchburg, Virginia?

A. Yes, sir, that would apply, but the opportunity is there.

*[218]

*Q. The opportunity is there, just exactly like there is an opportunity for me to steal from the railroad by reason of the fact you have given me this pass?

MR. CLARK: Mr. Examiner, he has twice used the expression, "Steal from the railroad." We have made no such implications of stealing. I hope that could be stricken.

MR. JOUROLMON: Mr. Examiner, I don't want it stricken. There is an implication here that these people of Tennessee are stealing from the railroad, that is exactly what the implication is. Every time anybody goes down and makes an interstate trip and pays an intrastate fare he is stealing from the railroad. That is an ugly word, and I am sorry it has to be used, but that is the implication, that these people are thieves.

MR. CLARK: We have said nothing of the kind, and I would like the record to show we have made no such implication.

EXAMINER McGRATH: I think the record is clear on that now.

MR. JOUROLMON: That closes my cross-examination.

MR. MILLER: Mr. Aiken, I have just a question or two.

Q. (By Mr. Miller) In just what way does this difference

between the intrastate fare, coach fare, and the interstate coach fare do any harm or injury to any person?

A. Well, it deprives the railroad of its proper earnings.

Q. Deprives the railroads of their earnings? Do you know any other way in which any person is injured? *[219].

A. No, I should think they would be benefited.

Q. Do you know of any way in which this difference of fares does any harm or injury to any locality, any state or county, or anything of that sort?

A. I don't know as I could answer that, Mr. Miller. I don't know about the local situations. Sometimes it might, from a merchandising standpoint. I don't know.

MR. MILLER: That is all I have.

EXAMINER McGRATH: Are there any further questions on cross-examination? All right, Mr. Clark.

REDIRECT EXAMINATION

Q. (By Mr. Clark) Mr. Aiken, on this question of harm to any person, let's come back to that. Two persons are traveling, one has to pay a higher rate than the other. Would you say that he is injured to the extent that he has to pay the higher fare?

A. Yes, I think it would be most unfair.

Q. The amount in and of itself, of course, is small on the individual ticket. You appreciate that?

A. Yes, sir.

Q. You have shown these differences on your exhibits; in some cases they are a little bit more than others, but in the main it is

relatively a small amount per passenger. But take a business
*[220]
concern with traveling men who are traveling, selling the goods of their firms, in competition with some other fellow. One is working on the intrastate basis and one on the interstate basis out of Chattanooga. Wouldn't you say the one that pays the intrastate rate, which is lower, has the advantage?

MR. MILLER: That is rather a leading question.

THE WITNESS: Yes, sir.

MR. CLARK: It has to be somewhat put that way to make it clear.

EXAMINER McGRATH: Have you answered the question?

THE WITNESS: I said, "Yes, sir."

Q. (By Mr. Clark) So in answering the effect of these lower intrastate rates is on the railroad, surely you didn't mean to imply to Mr. Miller that the traveling public has no interest in the fares?

A. Oh, no, not at all, not at all.

Q. Let's come right frankly down to the question of interest. The average person makes an occasional trip on the train. Would you say that the 50 cents or a dollar difference in fare would be a very material question to the individual passenger?

A. In some instances it would be quite a thing for him.

Q. Where it is a case of a business house paying railroad fare for a number of traveling men, would it be more or less of a matter of interest?

A. It would be more.

*[221]

Q. Much more?

A. I would think so, yes sir.

MR. CLARK: That is all.

MR. MILLER: May I ask another question in connection with that redirect?

EXAMINER McGRATH: Yes, but don't continue this indefinitely.

MR. MILLER: All right, sir.

RECROSS EXAMINATION

Q. (By Mr. Miller) This additional fifty cents or such that is to be paid, you propose to increase the rates so that a few more additional fifty cents will be paid, is that right?

A. I propose to put the intrastate fares on the same basis as the interstate fares to avoid these combinations.

MR. MILLER: That is all. I have nothing further.

Q. (By Examiner McGrath) Mr. Aiken, I want to ask you a question with respect to Witness Tassin's Exhibit No. 6, in which he sets forth the amount of revenue lost by the Southern Railway Company because of the difference in the intrastate and interstate fares. Are you able to say from your knowledge of passenger travel whether the application of the increase in fares sought would produce or would be likely to produce the amount of revenue that is indicated there as a loss, or whether it would have the opposite effect of discouraging traveling, and divert travel to other means of transportation?

A. Mr. Examiner, at the present time I would say that it

*[222]
would *have the effect of producing the revenue that Mr. Tassin's exhibit shows.

Q. Do you entertain any doubts about that?

A. No, not at the present time. The volume of traffic is such that it would produce it.

EXAMINER McGRATH: Are there any further questions?

Q. (By Mr. Jourolmon) In other words, you don't think that the increased fare would operate to discourage riding, and thus aid the government program of curtailing nonessential riding, you don't think it would operate in that way at all?

A. I don't know as I quite get that, Mr. Jourolmon?

Q. Have you heard that the O. D. T. (Office of Defense Transportation) has requested the carriers to do what they can to curtail nonessential riding, and has in addition to that requested the public not to ride except for essential purposes?

A. Oh, indeed I have; in fact, we do a good deal of advertising ourselves.

Q. Yes.

A. To that effect.

EXAMINER McGRATH: Would this proposed increase in the intrastate fares in Tennessee have that effect in any degree? Is that the question?

MR. JOUROLMON: Yes, I asked him just the opposite question. I said didn't what he said mean that it would not have the
*[223]
effect. You have simply stated it in the affirmative, *while I stated it in the negative.

THE WITNESS: I don't know definitely just what it would

do, but I am rather of the opinion that there would be no effect on the volume at the present time.

Q. (By Mr. Jourolmon) You are of the opinion that increasing this from 1.65 to 2.2 would not discourage riding at the present time?

A. It hasn't done it in the other states or interstate, and I don't think it would do it in intrastate here.

MR. MILLER: May I ask a question in connection with your examination, Mr. Examiner?

EXAMINER McGRATH: Yes.

Q. (By Mr. Miller) You qualified your answers to the Examiner by saying, "At the present time." What did you mean by that?

A. I mean this, Mr. Miller, you are passing through some very abnormal times. You, I think, know that yourself, and we on the railroad are just the same as you are to a large extent in the same condition. We are trying our best, and I think you will agree we have done a pretty good job up to this time to take care of all of the travel that is essential, both commercial and governmental agencies, including your own. You are an essential traveler down here, but we are taking care of you just the same, and a great many others from the various agencies of the govern-

*[224]

ment. We are not doing that to *our entire satisfaction from the passenger traffic men's standpoint; we would like to give you better dining car service; we would like to give you more room in cars, but the conditions are such that we cannot do it.

Q. Well, then, the answer is, as I understand it, that there will be no diversion because of the wartime conditions; is that correct?

A. That is correct.

MR. MILLER: That is all I have.

EXAMINER McGRATH: Are there any further questions?

MR. JOUROLMON: Yes, since you have brought up this question of crowded conditions on the railroads.

Q. (By Mr. Jourolmon) Are some of the passengers having to stand up as they travel, or are they all finding seats?

A. Some of them are standing up, Mr. Jourolmon.

Q. Do you know about what proportion?

A. No, I can't tell you that. It is a very difficult thing. They crowd on and we try to provide extra cars if we have them, but they insist upon getting on just the same.

Q. Who stands up, the interstate passengers or the intrastate passengers?

A. I wouldn't know, I wouldn't know that.

Q. Do they stand up in the Tennessean?

A. There are probably times that they do, although the Tennessean has got reserved seats in it, and in those coaches *they may crowd on sometimes, some of the furlough boys, and insist on riding, but as a general rule on the streamliners they don't stand up.

*[225]

Q. The interstate passengers will ordinarily be traveling considerable distances, that is correct, isn't it?

A. Yes, generally speaking.

Q. How far in mileage can an intrastate passenger travel on the Southern Railway in Tennessee?

A. About 241 or 242 miles, from Bristol to Chattanooga.

Q. As an average an intrastate passenger will be traveling much less than that, will he not?

A. The intrastate passenger what?

Q. As an average, the average intrastate passenger, in other words. I don't know the railroad terminology for per travel mile, per passenger trip or whatever it is, but that is what I am trying to get at, your average length of trip intrastate will be less than 241 miles?

A. It should be. I have made no figures on it, but it should be.

Q. If one person gets on the train and travels ten miles, that is bound to bring it down to less than 241 miles?

A. On the average, yes.

Q. Even if he is the only one?

A. That is correct.

Q. So an average, as an average they are traveling shorter

*[226]

*distances than that?

MR. CLARK: Much shorter.

THE WITNESS: I would think so, yes.

Q. (By Mr. Jourolmon) Do you have any notion about how much shorter it would be?

A. No, sir; I haven't any figures on it at all.

Q. Did you hear the prompting from the other side of the table, which was quietly said "much shorter"?

A. No, sir; I didn't hear anything.

Q. You didn't hear that prompting?

A. No.

MR. CLARK: I will stipulate that, if counsel wishes.

MR. JOUROLMON: All right, good.

EXAMINER McGRATH: Are there any further questions of this witness?

MR. CLARK: I will stipulate "much shorter."

THE WITNESS: I didn't hear it.

Q. (By Mr. Jourolmon) Passengers who are traveling right long distances through a state or through several states will have many opportunities when the travel is not quite so heavy, to find seats and preempt them, that is true, is it not?

A. Yes, on and off passengers.

Q. And the on and off passengers will in that way make seats
*[227]
for the longer travel, longer distance through passengers, *that is true, isn't it?

A. Make seats for all character of passengers, both intrastate and long distance.

Q. As a result of that, on the average, your intrastate passengers are going to have to assume the major burden of standing up on your trains, to the benefit of your interstate passengers, that is true, is it not? Mr. Examiner, I don't care for an answer to that question.

EXAMINER McGRATH: Are there any further questions of this witness?

MR. JOUROLMON: That is all.

EXAMINER McGRATH: You are excused.

(Witness excused.)

EXAMINER McGRATH: Your next witness.

MR. GWATHMEY: On yesterday Mr. Hopkins of the N. C. & St. L. Railway was asked by Mr. Jourolmon to furnish certain information.

EXAMINER McGRATH: Yes.

MR. GWATHMEY: He has it here now.

EXAMINER McGRATH: Will you come forward, Mr. Hopkins?

J. L. HOPKINS, having been previously sworn, was recalled and testified further as follows:

DIRECT EXAMINATION

Q. (By Mr. Gwathmey) Mr. Hopkins, you were asked on yesterday by Mr. Jourolmon to furnish figures for the Nashville,

*[228]

*Chattanooga and St. Louis Railway showing the revenue derived in Tennessee from both interstate and intrastate passenger travel; and secondly the revenue derived in Tennessee from intrastate travel. Have you prepared that information and will you give it now?

A. Yes, sir.

Q. All right, proceed.

A. If you will refer to Mr. Tassin's statement No. 1, the figures for the passenger revenue in Tennessee corresponding to the first period shown in that statement ended February 28, 1943.

Q. That is the twelve months ending February 28, 1943?

A. Twelve months ending February 28, 1943.

Q. Yes.

A. Total passenger revenue, inter and intrastate was $3,599,-084. For the same period the intrastate passenger revenue was $685,537.

The next period shown was twelve months ended September 30, 1943. However, as our statement ended one month earlier, I show for the twelve months ending August 31. The total passenger revenue in Tennessee in that period was $5,307,305. The intrastate passenger revenue in the same period was $846,692.

The third period shown on that exhibit was for the ten months
*[229]
ended September 30, 1943, but the figures for the *N. C. & St. L. were for nine months ended August 31, 1943.

Q. Nine or eight?

A. Sir?

Q. Was it nine or eight?

A. No, nine, because he wanted December included.

Q. All right.

A. The total inter and intrastate was $3,711,780. The intrastate was $639,499.

Q. You were also asked to give the amount of excess profit taxes included in railway tax accruals as shown in line 12, page 18, of Mr. Tassin's exhibit, the figures being for the Nashville, Chattanooga & St. Louis Railway. Will you give those figures for the years 1940, 1941, and 1942?

A. There were no excess profit tax accruals, nor was there

any paid in 1940 or 1941. We accrued for 1942, and included in the figures shown on Mr. Tassin's exhibit a total of $1,446,815 excess profit taxes.

Q. Now, I understand you to say that that figure represents the amount which you accrued and set up in your accounts, is that correct?

A. That is right.

Q. Is that figure subject to final readjustment, pursuant to such requirements as the United States Internal Revenue Department may make?

A. That is right. It may be two years before we know what

*[230]

the *final figure is.

MR. GWATHMEY: I think that gives you the information, Mr. Jourolmon.

CROSS-EXAMINATION

Q. (By Mr. Jourolmon) Mr. Hopkins, you have compiled this information in exhibit form, I believe?

A. I didn't understand it was wanted in exhibit form.

EXAMINER McGRATH: Off the record.

(Discussion had off the record.)

MR. JOUROLMON: I am through.

EXAMINER McGRATH: You are excused.

(Witness excused.)

MR. GWATHMEY: That completes the case on direct examination for the respondent railroads.

EXAMINER McGRATH: Off the record.

(Discussion had off the record.)

J. H. COKE, being first duly sworn, testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Jourolmon) Your name and address, Mr. Coke?

A. J. H. Coke, Clarksville, Tennessee.

Q. Are you employed by the Railroad and Public Utilities Commission of the State of Tennessee?

A. Yes, sir.

Q. In what capacity, Mr. Coke?

*[231]

*A. Inspector.

Q. As an inspector?

A. Yes, sir.

Q. Please state the length of your experience as an inspector?

A. Five years.

Q. Will you please state for the record what your duties have been as an inspector?

A. Well, check trains, bus equipment, truck equipment, railroad stations, bus stations.

Q. Mr. Coke, during the past month, month of November, have you had an opportunity to inspect some of the passenger service on some of the passenger trains in the State of Tennessee?

A. Yes, sir.

Q. On what carrier did you make these investigations?

A. N. C. & St. L. Railway.

Q. I would like to place in your hands a sheet. Will you describe what that sheet is?

A. It was prepared for me by Mrs. Waller. Of course, the red here is the branch lines of the N. C. & St. L. Railway (indicating).

Q. It is a small pencil sketch of the State of Tennessee, map of the State of Tennessee, showing the lines of the N. C. & St. L. Railway?

A. Yes, very roughly.

Q. And it shows the branches of the N. C. & St. L. in red?

*[232]

*A. Yes, sir.

MR. JOUROLMON: We would like to offer this as Exhibit No. 9 and have it marked for identification as Exhibit No. 9.

EXAMINER McGRATH: All right.

MR. JOUROLMON: And we will offer it hereafter.

(Exhibit No. 9, Witness Coke, marked for identification.)

Q. (By Mr. Jourolmon). Have you inspected the service and the equipment on these various branches of the N. C. & St. L. Railway?

A. Some of them, yes sir.

Q. Please state which ones you have inspected?

A. The Centerville branch, the Shelbyville branch, the Sparta branch, and the Palmer branch, and the Columbia branch.

Q. Were all of these intrastate branches which began and terminated within the State of Tennessee?

A. Yes, sir.

Q. On what date did you inspect the Centerville branch?

A. On November 10th.

Q. Now, will you state for the record just what your inspection developed at this time?

EXAMINER McGRATH: November 10th of this year, was that?

THE WITNESS: Yes, sir; November 10th, 1943. I left Dickson, Tennessee, at 9:40 a.m. on November 10th, 1943, and arrived at Bon Aqua, Tennessee, at 11:15 a.m. same date. The train was due to leave Dickson at 9:20 and arrive Bon Aqua at 10:01. It

*[233]

was one hour and fifteen minutes late. It is a distance of *approximately eleven miles. This train had about thirty freight cars and one coach. The coach was equipped with two coal stoves, kerosene lights, two rest rooms. There were no wash basins in the rest room, and the commodes would not flush.

MR. CLARK: May I ask if the witness is reading from a prepared statement?

THE WITNESS: Yes, sir.

MR. JOUROLMON: Yes, he is.

MR. CLARK: Has he furnished us with copies?

MR. JOUROLMON: They are really just his notes, but I will be glad for you to have copies. I don't know that we have enough copies for everybody.

MR. CLARK: From the speed at which he was going I took it he was reading them exactly.

THE WITNESS: They are notes that I made.

MR. JOUROLMON: I will be glad to break this down and ask him questions.

MR. CLARK: No, go ahead. I withdraw all I said.

THE WITNESS: There were no mirrors, one washpan.

MR. CLARK: No mirrors?

(Discussion had off the record.)

THE WITNESS: There was water in the cooler, but no cups, only one tin can for the water. Seats were not reserved, coach was not air conditioned.

Q. (By Mr. Jourolmon) Are you sure of that, Mr. Coke?

*[234]

*A. Yes, sir.

Q. All right.

A. Windows were dirty, seats were dirty, covered with ashes and cinders. There were open vestibule wooden coaches, which needed a good cleaning all over. When the train stopped or jerked, kerosene fell from the lamps on the floor near the hot stove.

Q. Did you say that there was one washstand, or one washpan?

A. Pan.

Q. One washpan. What sort of washpan was that?

A. Oh, it was very small, just a granite pan.

Q. Just a granite basin?

A. Hanging in the rest room.

Q. Did you observe any dates on that coach which would have given you any idea as to when the equipment was constructed?

A. No, sir.

Q. Or built?

A. No, sir.

Q. Were there passengers on the coach?

A. Yes, sir.

Q. Were they passengers which got on and off at local stations?

A. Yes, sir. Well, they got on at Dickson and got off at—one got off at Colesburg. I got off at Bon Aqua, and I don't know where the other one went.

Q. How was the weather on November 10th?

*[235]

*A. Cool.

Q. Very cold?

A. Well, it was cold.

Q. Can you describe just about how cold?

A. It was a frosty morning; it was real cool.

Q. Was the coach very frigid?

A. No, sir.

Q. How was the conditions of the atmosphere in the coach, the temperature?

A. Well, it was stuffy and hot, because they had a coal stove

there, and when they got out to Colesburg, in fact, they were switching, and I got out to get some air, it was so warm.

Q. You got out at Colesburg to get some fresh air?

A. Yes, sir.

Q. Do you know whether those passengers who were riding that coach were interstate or intrastate passengers?

A. No, sir.

Q. Was this coach equipped with any dining service of any sort?

A. Well, I wouldn't say that; the conductor had a coffe pot wired on the stove, and of course asked me to have some coffee—of course, in a joking way; I asked him if this was a diner, and he said "yes." He asked me to have some coffee out of a tin can with him.

EXAMINER McGRATH: Did you state the distance from
*[236]
and to *those points that you traveled?

MR. JOUROLMON: He did. It was eleven miles.

THE WITNESS: I said approximately eleven miles, yes sir.

Q. (By Mr. Jourolmon) How far does this go beyond Bon Aqua?

A. It goes to Hohenwald, Tennessee.

Q. It goes on to Hohenwald?

A. Yes, sir.

Q. You didn't ride the train the entire length?

A. No, sir.

Q. You got off at Bon Aqua?

A. Yes, sir.

Q. Will you state on what day you rode on the Sparta branch?

A. On November 22nd, 1943.

Q. Will you state when that train left Sparta, and where you went?

A. I left Sparta, Tennessee, at 2:00 p.m., November 22nd, 1943, and arrived at Doyle, Tennessee, at 2:30 p.m., November 22nd, 1943.

Q. Describe whether the train was on schedule or not?

A. Well, the train was due to leave Sparta at 11:00 a.m. and due to arrive at Doyle at 11:15 a.m. The train was three hours and fifteen minutes late. Of course, the train bulletin showed the train was marked on time. It had about fifteen freight cars in this train and one passenger coach.

Q. Will you describe now the condition of the coach?

*[237]

*A. The coach is constructed of wood, had leather upholstery seats in it. This train had electric lights and was equipped, heated with coal stoves, had no reserved seats in it, not air conditioned. Rest rooms—could not flush toilets, no wash basin. Windows and floors were dirty.

Q. How about mirrors?

A. No mirrors were in this train, no sir.

Q. Was the car a compartment car?

A. Yes, sir; it is built in three compartments; they have a smoker with about six seats in the rear of the car. The car was marked "men" and "women." However, I think—it was marked

"men" and "women." On this train there was one colored passenger. All of the men and women sat in the men's car and the colored passenger sat in the women's part.

Q. If the women were to go to the rest rooms, where did they have to go; in other words, which end of the car would they go to, would they pass through the colored car or the others?

A. Yes, sir, if they had went where it was marked "women."

Q. They would have to go through the colored section of the car?

A. Yes, sir.

Q. Now, will you describe the conditions of the coach with reference to cleanliness?

A. The windows were dirty and the floors and seats were covered with ashes and dust.

*[238]

*Q. Was this a closed vestibule coach?

A. No, sir.

Q. Or was it open?

A. Open.

Q. Do you have any information as to whether the train ordinarily operates on schedule or does not?

A. The agent at McMinnville told me it was usually two to three hours late.

Q. Were the passengers on this coach local passengers, getting on and off at various stations?

A. I don't know, sir. I got on at Sparta and I rode to Doyle. Of course, this train runs from Tullahoma to Sparta, is my un-

derstanding. Where these other people got off I don't know, I got off at the first station.

Q. Going back to the Centerville branch, were there any sleeping quarters in that coach?

A. Yes, sir, there was a set of springs and a mattress, and some cover in the rear of the car. The back of one seat had been taken out and they had a bed and a mattress and cover there in one corner of the car.

Q. So this car was a combination diner, sleeper and day coach, is that right?

A. Yes, sir.

Q. Now, going to the Palmer branch, when did you inspect the service on the Palmer branch?

*[239]

*A. November 23rd, 1943.

Q. Will you state what points you traveled between?

A. Between Cowan, Tennessee, and Sewanee, Tennessee. I left Cowan at 12:40 p.m. and arrived Sewanee 1:35 p.m.

Q. Was the train on schedule?

A. The train was due to leave Cowan at 10:10 a.m. and due to arrive at Sewanee at 11:05 a.m. It made it two hours and thirty minutes late. The distance is approximately eight miles, fifty-five minutes running time. It had about twenty freight cars and one coach. The coach was equipped with coal stove, kerosene lights, rest rooms with no wash basins, no soap, no mirror, and couldn't flush the toilet; there were no reserved seats; the train was not air conditioned, no drinking cups, water in one cooler; seats covered with ashes; windows were dirty; coach was constructed of wood, needed a good cleaning; vestibules were open.

Q. Were the passengers on that train local passengers?

A. Yes, sir.

Q. Were they getting on and off?

EXAMINER McGRATH: How far did you go on that train?

THE WITNESS: I went practically eight miles, I got off at the first station. There were other passengers that got off there, I don't know just how many; it seems to me like nearly all of them did, but I didn't look back to see.

Q. Now, then, on the Shelbyville branch, will you give the
*[240]
same *information with reference to your inspection on this branch that you have these others?

A. I left Wartrace, Tennessee, at 12:20 p.m. November 30th, 1943, and arrived at Shelbyville, Tennessee, at 12:50 p.m. the same date. This train was due to leave Wartrace at 11:55 a.m. and due to arrive at Shelbyville at 12:20 p.m., which made it thirty minutes late. The distance was about nine miles. The train had about nine freight cars and one coach. The seats were not reserved; the coach was not air conditioned, with open vestibule; heated with coal stoves; lights were kerosene; windows were dirty. The commode in the rest room would not flush, no wash basin, no soap, no towel; the coach was constructed of wood; seats were covered with ashes and cinders.

Q. Did you notice the passengers on this train, as to whether they were local passengers?

A. They were, yes sir.

Q. Or through passengers. They were local passengers?

A. Yes, sir.

Q. There was one other branch that you spoke of and inspected, Mr. Coke?

A. The Columbia branch.

Q. When was this inspection made?

A. November 30th, 1943.

Q. Make the same statement with reference to your time of leaving and condition of the coach?

*[241]

*A. I left Lewisburg, Tennessee, at 3:15 p.m.; arrived at Petersburg, Tennessee, at 4:15 p.m. This train was due to leave Lewisburg at 2:00 p.m. and due to arrive at Petersburg at 3:15 p.m., which made it one hour late. The train had about twenty-eight cars and one passenger coach.

Q. Twenty-eight of what sort of cars?

A. Freight cars. The coach had open vestibules, smoker, two compartments, three rest rooms, coal stove, electric lights, clean windows, no wash basins in rest rooms, and could not flush commode; there were no reserved seats and coach was not air conditioned.

Q. Were the passengers who were traveling on this equipment local passengers or through passengers?

A. Local.

Q. You have described the service on five branch lines on which the service consists of a mixed freight and passenger service. Did the freight trains have cabooses?

No, sir.

Q. What was used in lieu of a caboose?

A. The coach, the train crew was—part of the train crew was riding in this coach.

Q. They used these various coaches as cabooses, in addition to passenger service?

A. Yes, sir.

MR. JOUROLMON: You may take the witness.

*[242]

*CROSS-EXAMINATION

Q. (By Mr. Gwathmey) I believe you said you made all of these trips over these branch lines in November, did you not?

A. Yes, sir.

Q. What was the occasion of your making these trips?

A. Mr. Hendley asked me to make them.

Q. Who is M Hendley?

A. He is the rate expert for the Tennessee Railroad and Public Utilities Commission.

Q. Did Mr. Hendley tell you what he wanted you to make these trips for?

A. No, sir.

Q. Had you ever made any trips over these branch lines before?

A. No, sir.

Q. Did you receive any instructions as to what you were supposed to develop in the course of these trips?

A. No, sir.

Q. Nobody told you anything?

A. Not what I was to develop, no sir.

Q. What did they tell you?

A. Told me what to look for.

Q. What to look for?

A. Yes, sir.

Q. Just a difference in words.

*[243]

*MR. JOUROLMON: Did he ask you to look and see whether they were air conditioned?

THE WITNESS: Yes, sir.

Q. (By Mr. Gwathmey) In other words, he told you to find out everything about these trains that you could find out that in your opinion indicated they were not particularly good trains, is that not about right?

A. Well, he didn't word it that way.

Q. Now, Mr. Coke, take this Centerville branch, the first one. What is the entire length of that branch?

A. I don't know.

Q. Have you any idea?

MR. JOUROLMON: We are planning to develop that, Mr. Gwathmey.

MR. GWATHMEY: Have you figures in that connection?

MR. JOUROLMON: Yes, we have that in an exhibit which was to be developed by Mr. Hendley, but it is all right to put it in by this witness. May I interrupt and present this as our exhibit then by this witness?

MR. GWATHMEY: Yes, sir.

REDIRECT EXAMINATION

Q. (By Mr. Jourolmon) Mr. Coke, I place in your hands an exhibit headed "A comparison, showing main track mileage of the N. C. & St. L. Railway," showing per cent of mileage in Tennessee, where passenger service consists of a coach hooked to
*[244]
the rear *of a freight train in lieu of a caboose. Will you file that exhibit and mark it for identification as Exhibit No. 10?

A. Yes, sir.

(Exhibit 10, Witness Coke, marked for identification.)

MR. JOUROLMON: I will offer these exhibits.

MR. GWATHMEY: The exhibit is not altogether clear to me. I want to ask him just to explain it. It says "miles served by passenger train" in one column and "by freight train" in another column.

RECROSS EXAMINATION

Q. (By Mr. Gwathmey) Does that mean the total mileage in both directions?

A. No, sir; one way.

Q. One way?

A. Yes, sir.

Q. What do you mean by "miles served by freight train"?

A. Mixed train.

Q. I asked you about the Centerville branch, and I see opposite Centerville the figure 50.40. Does that mean that the Centerville branch is fifty miles long?

A. Yes, sir.

Q. And your Shelbyville branch is eight and a fraction miles long, and so on?

A. Yes, sir.

*[245]

*Q. Did you state the number of passengers you found on that train, on the Centerville branch when you rode it?

A. Yes, sir.

Q. How many were there?

A. Three.

Q. Three?

A. Yes, sir.

Q. Did that include you?

A. Yes, sir.

Q. Two others besides yourself?

A. Yes, sir.

Q. And I believe you say one got off and you got off and the other fellow went on, and you don't know where he went?

A. No, sir.

Q. Can you tell us about how many passengers you found on these trains on the Sparta branch, just in a general way about how many people?

A. About ten.

Q. About ten people on the train?

A. Yes, sir; there is only one other train that I have got that information on and it was Wartrace to Shelbyville.

Q. There were twelve on that train?

A. Yes, sir.

Q. How about your Palmer branch, about how many were on that train?

*[246]

*A. About three.

Q. About three?

A. Yes, sir.

Q. It has been suggested I ask you how many of those were people riding on passes, employees?

A. I don't know, sir.

Q. You don't know how many were railroad employees?

A. No, sir.

Q. Suppose that a citizen located on the Centerville branch wanted to take a trip to Chattanooga?

A. Excuse me just a minute. Do you mean train crew that was riding on the train?

Q. No, no, I mean people in the coach, passengers?

A. They had tickets.

Q. All right.

A. I am not counting the train crew.

Q. You don't know how many of these people who were riding in the coach may have been employees of the railroad, working on the railroad, possibly, I don't mean operating the train?

A. I don't know about that; they had tickets. I am not counting the train crew.

Q. I see. Suppose a citizen located on the Centerville branch, for example, wanted to take a trip to Chattanooga. He would ride on that same train down to the junction, wouldn't he?

A. Coming from Centerville over to Dickson?

*[247]

*Q. No, no, suppose a man located at some station on the Centerville branch wanted to take a trip to Chattanooga by railroad, wouldn't he use that same train?

A. I don't know.

Q. What other train could he use, if he didn't go down by automobile to the junction point? He would have to use that train, wouldn't he?

A. I'll grant you that you are right on that, I don't know.

Q. Take a citizen on the Sparta branch, suppose he wants to go to Chattanooga by railroad. He would come down, use that same train, wouldn't he?

A. Yes, sir.

Q. And the same thing on these other branches, isn't that true?

A. I don't know whether I am following you right clear here or not.

MR. JOUROLMON: The only thing about that, this witness simply means he is not qualified as an expert on this particular matter.

MR. GWATHMEY: If you want to object, you have the right to object to it. Is the train which you rode—

MR. JOUROLMON: I don't object, you go ahead and ask him the questions. He will answer anything he can.

MR. GWATHMEY: Are you through?

MR. JOUROLMON: Yes, sir.

Q. (By Mr. Gwathmey) Was the train which you rode, operating *[248] on the Centerville branch, for example, the only passenger train that operates on that branch?

A. From the timetable, it is, yes sir.

Q. Yes. Now, I asked you if a man who lived out on that branch wanted to go by railroad to Chattanooga, he would have to use that same train, would he not?

A. Yes.

Q. Of course. Now, he would be an interstate passenger, wouldn't he?

A. Yes, sir.

Q. And he would get exactly the same service that the man who got off at Centerville, or wherever the junction point is, or got off locally on the line, wouldn't he?

A. Yes, sir.

Q. And the same thing is true of each one of these other branches that you spoke of, isn't it?

A. Yes.

MR. GWATHMEY: That is all.

EXAMINER McGRATH: Exhibits 9 and 10 are received in evidence.

(Exhibits 9 and 10, Witness Coke, received in evidence.)

EXAMINER McGRATH: You are excused.

(Witness excused.)

MR. JOUROLMON: Mr. Hendley, will you take the stand?

*[249]

*J. O. HENDLEY was sworn and testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Jourolmon) Mr. Hendley, will you state your name and address for the record, please?

A. J. O. Hendley, Room 110, War Memorial Building, Nashville, Tennessee.

Q. Will you state the capacity in which you work for the Railroad and Public Utilities Commission?

A. I am at the head of the Department of Railroads, and have been for thirty years.

Q. Please state your experience in this capacity, and any other railroad experience that you have had?

A. I started to work in the transportation department of the Louisville & Nashville Railroad when I was eighteen years old, and from there I went to the general freight office of the Southern Railway, where I worked up from assistant rate clerk to chief rate clerk. For a while I was traffic manager for the Raleigh & Southport Railroad in Raleigh, North Carolina. My entire working life has been spent either with the railroads or with the Railroad Commission.

Q. At what date did you go with the Tennessee Railroad and Public Utilities Commission?

A. October 10th, 1913.

Q. What have been your duties as a member of the staff of

*[250]

that *Commission?

A. All matters pertaining to railroads go over my desk.

Q. I wish to place in your hands Exhibit No. 9, which was introduced and identified by the witness Coke. Mr. Coke was asked on cross-examination by Mr. Gwathmey whether the same thing applied to all branches of the N. C. & St. L. Railway with reference to intrastate passengers. Did Mr. Coke give the correct information with reference to that?

A. I doubt if there is a ticket office anywhere on the Centerville branch. That being the case the conductor would collect the cash fare, and it would read from the point where he embarked on the train to Dickson, and he would be an intrastate passenger, no matter where he went eventually, because the conductors are not allowed to collect fares beyond their line.

Q. What is true with reference to the other branches?

A. It depends entirely upon whether or not the fare was paid to the conductor, or whether he bought a ticket from an agent.

Q. Is that all that you care to say with reference to the testimony of Mr. Coke?

A. Yes, sir.

Q. Mr. Hendley, have you prepared an exhibit for introduction in this matter?

A. I have.

*[251]

*Q. Will you offer this exhibit into evidence and have it marked for identification Exhibit No. 11?

A. Yes, sir.

EXAMINER McGRATH: Yes, Exhibit No. 11 is the next number.

(Exhibit 11, Witness Hendley, marked for identification.)

Q. (By Mr. Jourolmon) The exhibit consists of thirty-two pages?

A. Yes, sir.

Q. And contains all of the information which you wish to present in exhibit form?

A. Yes, sir.

EXAMINER McGRATH: We will take a short recess.

(Whereupon a short recess was taken.)

EXAMINER McGRATH: Are you ready to proceed?

MR. JOUROLMON: We are.

Q. (By Mr. Jourolmon) Mr. Hendley, we have marked for identification Exhibit No. 11, which consists of thirty-two pages. Will you turn to page No. 1 of this exhibit, which is headed a comparison of passenger revenues, and make any statement with reference to this page of the exhibit that you may desire to make?

A. The 2.2 coach fare rates which were permitted by the Interstate Commerce Commission for the carriers to publish were based upon what I understood to be the conditions in 1941, and this first statement was prepared for the purpose of showing that

*[252]

any passenger fare rate that was permitted as a *reasonable passenger fare rate is no longer reasonable. And especially is that true as to Tennessee.

The Tennessee Central Railway operates passenger service in Tennessee alone. Its passenger revenue in 1941 was $55,939; in 1942, it was $187,386, an increase of 234.98 per cent.

And for the nine months in 1943 it was $459,756, an increase for only nine months in 1943 of 721.89 per cent over the full cal-

endar year of 1941, and an increase of 145.35 per cent over the full calendar year of 1942.

In my opinion, any passenger fare rate that was reasonable in 1941 is not reasonable in 1942. It is also my opinion that any passenger fare revenue that was reasonable in 1942 was not reasonable in 1943, because the conditions have so changed as to make a reinvestigation necessary.

MR. GWATHMEY: Mr. Examiner, I merely want to note on the record an objection similar to the objection which has heretofore been made by Mr. Jourolmon as to what the Interstate Commerce Commission considered when it authorized the 2.2 cent fare in Ex Parte 148. Of course, the report of the Commission will speak for itself as to that.

EXAMINER McGRATH: I think that is understood.

MR. JOUROLMON: That is sound, yes.

Q. (By Mr. Jourolmon) This first page represents simply a comparison of the revenues, passenger revenues for two sep-

*[253]

arate years, as compared with nine months of the present *year, is that right?

A. Yes, sir.

Q. Will you proceed?

A. Respondents in this cause refer to the N. C. & St. L. as a "typical Tennessee line." They did that before the Tennessee Commission. The passenger revenue of the N. C. & St. L. increased in 1942 over 1941 by 172.79 per cent. Nine months of 1943 show an increase over the year 1941 of 277.91 per cent; over the year 1942 of 38.52 per cent. The total passenger revenue of respondents increased in 1942 over 1941 by 130.75 per cent. For the

ine months in 1943, it increased over the year 1941 by 196.42 er cent; over the year 1942 by 28.46 per cent.

Those figures represented an increase in the nine months of 943 as compared with the full calendar years of 1941 and 1942. These lines do not appear to be in need of additional passenger evenue, and the interstate passenger fare of 2.2 must be proven o be reasonable at the time of the issue before the Tennessee fares an be raised to the interstate level.

MR. CLARK: Isn't this more argument?

MR. McGRATH: I think that latter part is strictly argumentative, and I will ask you please to refrain from including argument in your testimony.

THE WITNESS: All right, sir.

Q. (By Mr. Jourolmon) Now, Mr. Hendley, that first page
*[254]
represented a comparison of passenger revenues of the two most ecent full calendar years 1941 and 1942, and compared them with he nine months' period in 1943?

A. Yes, sir.

Q. Now, do you have a page in this exhibit which will compare these same periods of time by nine months' period?

A. That will be shown on page 2 of my exhibit, which shows comparison of passenger revenue for nine months of 1943, as compared with the corresponding period of the years 1941 and 1942. For the Tennessee Central Railway, 1943 over 1941, 1,056.56 per cent, and 1943 over 1942, 345.61 per cent.

For the N. C. & St. L., 1943 over 1941, 426.15 per cent, and 1943 over 1942, 126.33 per cent. The total for all respondent ines, 1943 over 1941, was 314.24 per cent, and 1943 over 1942, 93.94 per cent.

Q. Those exhibits in both instances show the authority for the statements and information therein contained?

A. They do.

Q. Do you wish to say anything further with reference to those two sheets?

A. No, sir.

Q. Turn to page 3 of your exhibit and state what this page shows.

A. This page shows a comparison of the number of passengers.

EXAMINER McGRATH: It is not necessary to state in the
*[255]
*record what is clearly indicated by the exhibit. Is there something there that you want to stress?

THE WITNESS: Yes, sir.

EXAMINER McGRATH: You may point it out.

THE WITNESS: It is significant of the three lines operating in Tennessee, the greater the percentage proportion of their mileage that is in Tennessee, the greater the percentage of increase in passengers riding in passenger cars.

Q. (By Mr. Jourolmon) You do not show on this exhibit the percentage of mileage in Tennessee. Do you have another exhibit that shows that?

A. That will be shown in another exhibit. In 1942 the increase over 1941 for Tennessee Central was 140.32 and the N. C. & St. L. 86.89, the C. N. O. T. P. 101.90 per cent.

When you consider that the average number of cars in train has also increased, it makes it a much better showing. It costs no more to haul a coach with fifteen passengers than it would

cost to haul the same coach with six passengers, that being the argument of respondent when they petitioned the Tennessee Commission to allow them to put in the cent and a half rate.

Q. You have derived this page of your exhibit from the 1942 annual report to the stockholders. You have two notes on this report with reference to a different phraseology used in the Illinois Central report and the N. C. & St. L. report. Do you understand
*[256]
that the figures are actually comparable, and refer to *the same thing?

A. I understand it is just a different way of expressing the same thing.

Q. Turn to page 4 of your exhibit and make any statement with reference to that exhibit which you think is pertinent?

A. For 1941 I have ascertained the average revenue per passenger car mile by multiplying the average number of passengers per passenger car by the average number per passenger per mile, which includes the sleeping cars, chair cars, parlor cars, deluxe cars, as well as coaches.

Q. Then what have you done for the year 1942?

A. For 1942 I have multiplied the average number of passengers per car by the 1.65 passenger per mile applicable in Tennessee intrastate traffic. The increases in revenue per passenger car range from 44.43 per cent to 116.46 per cent, the greatest increase being those lines having the greatest percentage of mileage in Tennessee.

Q. In actual practice and experience, would the average revenue per passenger per mile in cents be exactly 1.65, or would it, in your opinion, be something above or below that figure?

A. In my opinion, it would be something above, because we have included in this passengers riding in parlor cars, deluxe

cars, and sleeping cars where the passenger rates are invariably more than 1.65 per mile.

Q. Do you have anything else to say with reference to that?

*[257]

*A. No, sir.

Q. If not, let's turn to page No. 5.

A. Page No. 5, I couldn't get the average number of passengers per passenger carrying car for the year 1943 separate as to each particular railroad. We could, however, get the average for the Southern region, and in view of the fact that the Nashville, Chattanooga and St. Louis Railway is a typical Tennessee line, it might be well to note that the average number of passengers per passenger carrying car for the N. C. & St. L. Railway in 1942 was 22.31, which compares very favorably with the average number of passengers per passenger carrying line for all Southern region cars of 22.9.

Q. This exhibit shows that if all Southern region carriers would apply a straight 1.65 cents per mile rate to all classes of passengers for 1943, the increased revenue per car for 1943 would exceed actual earnings for 1942 by 18.66 per cent.

Q. Is there anything further with reference to that?

A. No, sir.

Q. All right, your page No. 6, which is headed "Passenger statistics of class 1 steam railroads."

A. This exhibit shows that the number of passengers per passenger car is still on the increase, and that the number of passengers riding coaches is still on the increase, especially in the Southern region.

Q. Is there anything further with reference to that exhibit?

*[258]

*A. No, sir.

Q. Now, Mr. Hendley, I call your attention next to the three next pages of your exhibit, which are pages No. 7, No. 8, and No. 9, and which show in each instance a small map of the State of Tennessee with a route line drawn across. Will you describe and explain what these exhibits show?

A. Apparently acting under the suggestion of Mr. Eastman, the carriers are now to a limited extent applying a pooling of their passenger traffic. Three coach streamlined deluxe passenger seat, personal seat—

Q. Reserved seats?

A. Personal seats, I mean deluxe reserved seats, air conditioned trains are operated between Chicago, Illinois, and Miami, Florida, one train each way daily. On December 1 the Southwind leaves Chicago over the Pennsylvania Railroad, L. & N., A. C. L., etc.

On December 2nd the Dixie Flagler leaves Chicago over the C. & E. I., the L. & N., N. C. & St. L. to Atlanta, etc.

On December 3rd the City of Miami leaves Chicago over the Illinois Central Railroad. Coach tickets held by passengers for passage over either one of these routes can be exchanged at the option of the passenger for ticket via either of the other of these routes, which is certainly a wonderful convenience.

Q. Is that a convenience that can be made available to inter-

*[259]

*state passengers, or to intrastate passengers?

A. In Tennessee, interstate only. The geographical location of Tennessee is such that each of these three trains, these three streamlined reserved seats, no extra fare, deluxe coach trains, passes through Tennessee, serving interstate passengers into, out of, and through Tennessee, but the safety, conveniences, comforts, and hospitalities which they offer to interstate passengers are in each instance denied to the intrastate passengers in Tennessee.

My first exhibit is the route of the City of Miami.

Q. By that you mean page 7 of your Exhibit No. 11?

A. Page 7.

Q. Yes.

A. The City of Miami, Illinois Central Railroad from Chicago to Miami. It is a deluxe coach, streamlined, and speeds through Tennessee at fifty-one miles per hour, no extra fare, Diesel powered, coach, streamlined, deluxe reclining reserved seat coaches, completely air conditioned, radio, stewardess, registered nurse, exclusive coach for women and children.

EXAMINER McGRATH: That is all set out in the exhibit. You are merely repeating it, isn't that so?

MR. JOUROLMON: Those points are set out in the exhibit.

THE WITNESS: I just wanted to emphasize those points. I won't emphasize them on the others, but I will emphasize them

[260]

on the I. C. and the others are practically the same. They have tavern lounge car, a dining car, etc., all of which is denied to the intrastate passengers in Tennessee, but is not denied to the interstate passengers, or to intrastate passengers in Georgia, Florida, and Illinois.

Q. (By Mr. Jourolmon) Now, I wish you would explain exactly what you mean by saying that these services are denied to intrastate passengers in Tennessee. How many stops are made in Tennessee by this train?

A. By this train they will not make any stops for any intrastate passengers. They will stop at Milan to take on or discharge interstate passengers only. They will stop at Jackson to take on or discharge interstate passengers only.

Q. Is that the way it is expressed in the official timetable of the Illinois Central Railway?

A. It is.

Q. All right.

A. Next is the Southwind.

Q. Next page No. 8.

A. No. 8 is the Southwind. It carries all of the conveniences, comforts, and safety devices that the City of Miami does, as I have just explained. The speed through Tennessee is 51.22 miles per hour.

EXAMINER McGRATH: Are you reading that into the record again? That is all set out in the exhibit.

THE WITNESS: I want to emphasize the fact it handles
*[261]
*intrastate passengers in Alabama, Florida, and Georgia. It does not handle intrastate passengers in Tennessee.

Q. (By Mr. Jourolmon) Just what do you mean by that? What stops does it make in Tennessee?

A. It makes only one stop in Tennessee and that is Nashville. It makes that stop for the purpose of taking on interstate passengers or discharging interstate passengers.

Q. Your page 9 shows the route of the Dixie Flagler, a train which is operated through the State of Tennessee by the Louisville & Nashville and N. C. & St. L. Railways. Please make any statements you wish to make with reference to the stops of that train in Tennessee, and the restrictions on service.

MR. McGRATH: That are not set out plainly in the exhibit itself.

Q. (By Mr. Jourolmon) That's right, any points that are not plainly set out in the exhibit?

A. Well, I will make this one observation for that particular train that the speed through Tennessee is 44.6 miles per hour, and as to that train and the Southwind, I will make this observation that I have personally ridden both of these trains. I don't remember the exact date at the moment, but I attended the Indianapolis meeting before the Interstate Commerce Commission and rode the Southwind from Nashville to Indianapolis and returned. When I got off the train at Indianapolis, I felt refreshed,

*[262]

and I was just as clean as I was when I got on it. And I will say something else. It has the Pennsylvania Railroad diner, it is the Pennsylvania Railroad train, with the Pennsylvania Railroad dining car service, and you will have a most enjoyable and hospitable trip. I can say the same for the Dixie Flagler. I used that train from Nashville to Atlanta and return.

Q. What stops are made in Tennessee, and what restrictions are there upon passengers between points in Tennessee?

A. According to the published timetable, only two stops are advertised in Tennessee, Nashville and Tullahoma. Neither one of these stops are advertised to take on or discharge intrastate passengers in Tennessee.

Q. Is there any limitation to their taking on any intrastate passengers?

A. Oh, yes, there is a limitation, north of Evansville, or south of Atlanta, that is my recollection.

Q. That is for which point?

A. Tullahoma.

Q. They do stop at Nashville on all schedules?

A. On all schedules, but not for any intrastate passengers in Tennessee.

Q. Does that conclude what you have to say with reference to those three pages of your exhibit?

A. That concludes everything I wish to say in reference to those three interstate trains; they are strictly coach trains—

*[263]

*coach streamlined trains.

Q. Is there any other train operated by any other railroad, or by one of the same railroads, which has similar limitations, and if so, tell about that?

A. On my page 10 of my exhibit I show the route of the Pan American through Tennessee. That is the crack passenger train of the Louisville & Nashville Railroad. Possibly a great many of you have heard it pass through station WSM, and it is radioed all over the United States as being advertised as the crack passenger train of the Louisville & Nashville Railroad. It is not strictly a coach train; it carries sleepers and Pullmans and sections, and drawing rooms, and double bedrooms, and so on, but it does not carry any intrastate passengers in Tennessee. It will stop at Nashville for interstate passengers, or it will stop at Lewisburg only for interstate passengers, but its luxuries are denied to the intrastate passengers in Tennessee.

Q. Do you know the average speed of this train through the state?

A. The average speed of this train through the state is 43.5 miles per hour. Each of these exhibits shows that Tennessee is being discriminated against in that the Pan American will stop in Kentucky, in Alabama, and Mississippi for intrastate passengers, but not in Tennessee.

*[264]

Q. Is that all you care to say with reference to the Pan *American exhibit?

A. That is all, I believe.

Q. Turn to your page No. 11, if you please. What does the design on this exhibit represent?

A. That is a geographically correct map, tracing of the map of the Chattanooga Division of the N. C. & St. L. Railway. The blue lines are the route of the Dixie Flagler, the Dixie Flyer, the Dixie Limited. The average speed of the Dixie Flagler is 44.6, and the total distance 151 miles. The total mileage of branch lines is 249.4, and the average miles per hour range from 11.4 miles per hour to 20 miles per hour, that is provided the trains are on time.

Q. That is a comparison exhibit to those which were introduced by the witness Coke?

A. Yes, but I would like to make one addition. On the bottom of this exhibit, I would like to add the following, the Centerville branch, number of miles 52, and number of stations 26, average miles per hour 14.2, if on time.

Q. Now, your page No. 12, does that sufficiently explain itself?

A. Yes, that sufficiently explains itself.

Q. It has to do with these same branches that Mr. Coke has described?

A. That Mr. Coke has described, yes sir. It shows, however, the percentage of the mileage served by mixed freight and passenger trains for the entire system of the N. C. & St. L. Railway.

*[265]

*It is noted that for the system, 33.38 per cent of the mileage on its branch lines is served by mixed trains, while as indicated by Mr. Coke in his Exhibit No. 10 for the State of Tennessee, 38.54 per cent is served by freight trains.

EXAMINER McGRATH: Freight train or mixed freight and passengers, which do you mean?

THE WITNESS: I call it a freight train with a passenger coach used in lieu of a caboose. They call it mixed train service.

Q. (By Mr. Jourolmon) Your page No. 13, Mr. Hendley, contains fastened thereto an official timetable of the N. C. & St. L. Railway. Will you turn to any page of this that you want to comment upon and point out anything that you deem pertinent?

A. I will ask that you turn to page 15-16, beginning at the Chattanooga Division, and extending to the Nashville Division. You will note that between Chattanooga and Nashville they operate six trains; five of these trains are particularly, primarily, and predominantly interstate trains, offering to the interstate passengers every convenience, not only in equipment, but as to frequency of service and time of schedules.

Q. Are any of those trains those which offer no service whatever to the intrastate passengers?

A. Only one, according to their published timetables, and if

*[266]

you will read there on No. "H," the little flag, H, 12:53 *p.m. for the Dixie Flagler, you will find it stops for revenue passengers to and from Evansville, Louisville, and beyond, and also for revenue passengers to and from Atlanta or beyond.

MR. GWATHMEY: It stops where?

MR. JOUROLMON: Tullahoma.

THE WITNESS: At Tullahoma. Something was said yesterday about the expensive pusher service over the Cumberland Mountain at Cowan. Each one of those five trains are, as I said, predominantly interstate trains.

Q. (By Mr. Jourolmon) Give them by numbers, will you, please?

A. 12, 90, 94, 4, and 92 use that expensive pusher service to get over the mountain, while No. 6, which is the only train upon which a large percentage proportion of Tennessee intrastate passengers can ride, uses that pusher service only occasionally.

MR. JOUROLMON: I don't like to interrupt, but I cannot follow you in your statement of five trains which you say do not stop at points in Tennessee.

MR. JOUROLMON: He said which are predominantly interstate trains, he says.

MR. GWATHMEY: Several of these trains, such as 90, 94, and 4—

MR. JOUROLMON: Have limited stops?

MR. GWATHMEY: Make stops at various points.

*[267]

*THE WITNESS: They are limited stops. I said predominantly, I didn't say entirely.

MR. JOUROLMON: For the record, it is your contention that there are three different types of service here shown in this one timetable, one is the 100 per cent interstate service, which is represented by the Dixie Flagler, the other one is the predominantly interstate service, which is represented by the Dixie Flyer, Dixie Limited, No. 4 and 90, and the other is the predominantly intrastate service, represented by No. 6, and the timetable rather clearly indicates that that is what the service is.

THE WITNESS: I will ask you now to turn to pages 7 and 8 of that same exhibit. You will find there coach seat fares from Chattanooga to points in Tennessee. I want to say those fares

are illegal; they have never been filed with the Tennessee Commission.

MR. GWATHMEY: They are interstate fares. From Chattanooga to points in Tennessee, isn't that an interstate movement?

THE WITNESS: Well, now, let's see, from Nashville to—I will say from Nashville to Murfreesboro, look over at Nashville.

MR. GWATHMEY: All right.

THE WITNESS: From Nashville.

MR. GWATHMEY: Well, you answer my question first.

THE WITNESS: Chattanooga would be interstate, but let's *[268]
*look under Nashville.

MR. JOUROLMON: Mr. Examiner, just a little more orderly procedure, if you please. May I withdraw that answer made by the witness? I am quite willing for it to stand, but we will show that is an incorrect statement.

MR. GWATHMEY: All right.

MR. JOUROLMON: We will concede that the statement made with reference to Chattanooga is incorrect.

THE WITNESS: From Nashville they publish cafe coach seat fares from Nashville to Murfreesboro, Tullahoma and Cowan. Those rates are illegal, because they have not been filed with the Tennessee Commission.

Q. (By Mr. Jourolmon) The point that you have brought to the attention of the Commission shows that, with reference to the intrastate cafe coach service, in addition to its being illegal, because that is a matter that the Tennessee Commission ought to take up?

A. It shows that they charge all the way from twenty-five cents to seventy-five cents for a seat.

Q. Are those cafe coaches air-conditioned equipment?

A. I understand that they are, I have never ridden in one of them.

Q. Do you know anything else with reference to the conveniences offered in that cafe coach service?

A. I have never ridden in them, and I cannot say. All the

*[270]

information that I could give would be hearsay.

Q. Very good. Turn to your next page of your exhibit, which is page 14.

A. That is a tariff of the Tennessee Central Railway, publishing chair coach seat rates between points in Tennessee, showing that an extra charge is made for that service.

Q. That really is pages 14 and 14-a, which are a combined exhibit, is that right?

A. That is right, yes.

Q. A combined part of your exhibit. Then you have bracketed together several pages as pages 15-a, 15-b, 15-c, and so on?

A. Yes.

Q. Will you describe what that is?

A. That is the local tariff of cafe coach seat fares between Memphis, Nashville, and the intermediate points only. That is published in N. C. & St. L. Circular R-5034. It has been filed with the Tennessee Commission, but there is no indication on the tariff to the effect that it has been filed with the Interstate Commerce Commission.

MR. CLARK: Is the number right, 5034? I see it is 5030 here.

THE WITNESS: 5034.

EXAMINER McGRATH: What point do you make with respect to this page, or these pages of the exhibit? What is the basis of this cafe and coach seat fare?

*[270]

*MR. JOUROLMON: May I make the answer to that? That addresses itself to a question that we would argue in the brief. We have pointed out that much of this interstate service in these air-conditioned cars goes through without increased fares, whereas the same service that is offered intrastate on these cars, these cafe coach cars, which are air conditioned, and are the higher grade service, carries an intrastate increased fare charge. Those points are made.

EXAMINER McGRATH: Are these fares that you set forth on pages 15-a, b, and c of the exhibit under discussion, do they include both transportation and the seat accommodations?

THE WITNESS: No, sir, it includes—there is an extra charge for the privilege of sitting in a chair car seat.

MR. McGRATH: Over and above what you paid for your ticket?

THE WITNESS: Over and above what you pay for your ticket.

MR. JOUROLMON: That is it exactly when, as he explains on those deluxe trains, they make no such extra charge.

Q. (By Mr. Jourolmon) That is the purpose of the comparison?

A. That was my purpose in putting it in there.

Q. Now, Mr. Hendley, let's turn to page No. 16. At that and the succeeding pages through page No. 19, you are bringing to the attention of the Commission certain excerpts from various annual reports, or recent annual reports to the various railroad stockholders. Will you make any comment which is necessary

*[271]

to make in reference to these, that is not sufficiently *shown on the face of the exhibit?

A. I simply want to point out the high lights, if I may.

Q. All right.

A. On the Southern Railway at the close of 1942, the percentage of equipment in need of repair, lowest in the company's half of century of service. Then after deducting the dividends on preferred stock, paying fixed charges, the earnings amounted to $23.41 per share of common stock. The idea of that was to show they are not in need of additional revenue.

Q. Your second one is from the report of the L. & N. Railroad?

A. Well, the L. & N. Railroad shows the expense of operation did not increase proportionately with the earnings. The operating ratio for 1942 was 58.7, and was lower than any theretofore recorded.

MR. CLARK: That is all on the face of the exhibit?

THE WITNESS: Some of those high points—

EXAMINER McGRATH: Is that the freight operating ratio?

THE WITNESS: That is the whole thing, that is the only absolutely accurate—

EXAMINER McGRATH: That is freight and passenger combined?

THE WITNESS: That is freight and passenger; there is no allocation in that; it is just straight. It just took that much to earn a dollar. It is very strange that the president of the L. & N. in his report to the stockholders emphasized those streamlined

*[272]

coach trains continue popular. Their particular *appeal to patrons is economy in travel, fast schedules, high type coach conveniences, and provisions for seat reservations. The ratio of mechanical expense to gross revenue was lower than any previous year, but the equipment was currently maintained.

Q. (By Mr. Jourolmon) Your next one on page 18 is the report of the Illinois Central Railway?

A. Here is something that applies to all railroads. The company applied for and has been authorized to amortize over a period of five years the cost of fifty-one emergency facilities, aggregating $16,000,000 plus.

EXAMINER McGRATH: That is all clearly set out in the exhibit.

THE WITNESS: Yes, sir. And another thing I want to set out is the fact that of the thirty-five class 1 carriers in the United States, the Illinois Central Railroad stands second highest in the dollar amount of debt retired in 1942. I think these are necessary, because there has been so much said about expenses, expenses, but they are just a means, and I am giving you the end.

Q. (By Mr. Jourolmon) Now, the excerpts that you have taken from the reports of the N. C. & St. L. Railway at page No. 19?

A. Well, they stress the fact that their rolling stock, they are permitted to charge such expenditures to operating expenses over

*[273]

a period of five years, at the rate of twenty per cent *per annum, instead of the previous depreciation rates. They buy one of those immense Diesel engines, and they amortize it in five years, and I am anxious to know just how they get it into their capital account at the end of five years when the shippers have paid for it.

Q. Is that all you want to say on that?

A. He says something that I tried to get into the record yesterday. He said notwithstanding the fact that the pay roll increases effective September 1 were approximately $2,000,000, the percentage of operating revenue consumed by operating expenses dropped from 71.8 per cent in 1941 to 63.6 per cent in 1942. And if you add to that for nine months in 1943, it shows 63.2 per cent.

Q. In other words, the operating ratio is still on the decline, according to the last figures?

A. Yes. The president of the N. C. & St. L. has this observation to make—

EXAMINER McGRATH: Is that on your exhibit?

THE WITNESS: I just wanted to state this one little thing.

EXAMINER McGRATH: If it is on the exhibit, you don't have to state it.

THE WITNESS: No, I don't have to say it.

EXAMINER McGRATH: Your counsel can emphasize that in the brief.

*[274]

*Q. (By Mr. Jourolmon) Turn to your page No. 20, which is headed "Comparison of Expense of Maintenance of Way and Structures." Isn't this another comparison by years?

A. It is a comparison by years with the nine months of 1943.

Q. Does it sufficiently speak for itself, or is there some point that you want to derive from that?

A. I want to make this observation, that it was expected that the maintenance of way and structures would be rather high, but that is one item of expense that can be deferred, and sometimes is deferred, but it is not being deferred now, and that is, in my opinion, good common sense, good business sense, because for every additional dollar paid for maintenance of way and structures, it reduces the excess profits tax by ninety cents, or, to state it differently, they get one dollar's worth of maintenance done for ten cents, when you consider that they are all in the excess profits bracket. And I may add this one thing, and I think it is significant that the government will refund to them ten per cent of all excess profits paid—that is, after the war—if Congress doesn't change the law in the meantime.

MR. CLARK: That is a speculative statement that I do not think is material or helpful, and I move that it be stricken.

EXAMINER McGRATH: Well, that motion is denied.

MR. JOUROLMON: Mr. Examiner, I believe it is 12:30.

EXAMINER McGRATH: We will recess until 2 o'clock.

(Whereupon, the hearing was recessed at 12:30 p.m. until 2:00 p.m. of the same day.)

*[275]

*AFTERNOON SESSION

The hearing was resumed, pursuant to recess, at 2:00 p.m.

EXAMINER McGRATH: You may proceed.

J. O. HENDLEY, having previously been sworn, resumed the stand and testified further as follows:

DIRECT EXAMINATION

Q. (By Mr. Jourolmon) I believe we had proceeded in your exhibit through page No. 20?

A. Yes, sir.

Q. Page No. 21 is headed comparison of amortization of defense projects. Will you make any statement necessary to clarify any point on that page of the exhibit?

A. The idea is that as a whole $11,143,378 in 1942 and $10,998,803 for nine months in 1943 has been charged off to operating expenses under the rules of the Income Tax Division, or the Department of the Treasury, which has the effect of the shippers of freight in those years paying for those things at these rates shown per annum.

Q. How about passenger traffic, that is not all chargeable to freight expenses, is it?

A. Oh, no.

Q. These represent capital charges?

*[276]

A. No, they should be charged to the capital account, and *then depreciated in the old way on a smaller amount to each year, but the federal government has allowed them to amortize anything used for defense purposes, bought for defense purposes, to amortize that in five years.

Q. What is your page No. 22 headed "Comparison of Ratios of Expenses, Maintenance, and Transportation" to revenues?

A. That is to show that the revenues increased to a much

greater extent than the expenses, and included in these items were all of the expenses in addition to maintenance and transportation expenses. The fact these revenues increased and the ratio of expense to revenue decreased has the effect of compounding the increases in the net railway operating revenues. The ratio of revenues to expenses, Southern Railway, decreased from 63.3 to 52.5, the Tennessee Central from 74.4 to 66.4. The N. C. & St. L. came down from 71.8 to 63.2, while rates of revenue to transportation for Southern Railway decreased from 31.1 to 24.4, Tennessee Central from 33.8 to 28.1, and the N. C. & St. L. from 37.4 to 29.3.

Q. Now, your page No. 23 is a comparison of one carrier, the Nashville, Chattanooga & St. Louis Railway, passenger revenues, and shows certain ratios. What explanation do you have to make with reference to this exhibit?

A. That exhibit shows the ratio of expenses to the total revenues, just as far back as the record of the Commission went;

*[277]

1921 was as far back as I had the information. In *1921 the ratio of expense to revenue was 93.7, passenger revenue $5,115,363. Of this amount $322,268 went into net railway operating income. In 1929 the ratio of expenses to revenue was 75 per cent cent, passenger revenue $3,909,440.

MR. CLARK: As a matter of fact, it is $2,000,000, isn't it?

THE WITNESS: I believe it is $2,000,000.

EXAMINER McGRATH: Is there anything to be gained by repeating those figures in the record?

THE WITNESS: It is just simply to show, Mr. Examiner, the milk in the cocoanut is the ratio of expenses to total revenue, and when in one of their highest months, 1921, where the ratio was 93.7, take the lowest month, it was only $2,909,440, and out of

that more revenue went to net railway operating income than out of the high.

Q. (By Mr. Jourolmon) In the year of large passenger revenues?

A. In the year of larger passenger revenue. It just simply shows that it is the ratio that counts. I have used for my comparisons at the bottom of this statement the highest ratio and the lowest ratio as compared with the ratio currently of 1942 and for nine months of 1943 just to show you that.

Q. You were simply calling attention to 1921 and 1929 especially?

A. Yes, sir, I just described them in there to show the highest and the lowest.

Q. On page No. 24, just call attention to anything special on *[278]
*that page?

A. This is the net railway operating income. That is what the property actually earns. I have compared those simply for the Tennessee Central Railway, because it was strictly a Tennessee line; for the N. C. & St. L. because it was a typical Tennessee line, and for the Southern Railway because it embraces all, or operated in all states in the Southern region.

Q. Is that all you have to say with reference to that?

A. Yes.

Q. On page No. 25 you show a comparison of the percentages of mileage for roads in Tennessee. Do you have anything to say with reference to that?

A. I have this remark to make and offer, that if you will look over the previous statements that have been filed, you will find

that those lines having the largest percentage of mileage in Tennessee show a large per cent of increase.

Q. Now, you made a comment with reference to this particular exhibit when you were first starting your testimony and were comparing the figures on pages 1 and 2—is that the page on which that comment was made?

A. That one and others.

Q. So this ties in to those other pages?

A. Showing that lines having the largest percentage of their mileage in Tennessee are, as a rule, just a little bit better off than the others.

*[279]

*Q. Now, your page 26 of this exhibit.

A. That is a statement which was filed with the Tennessee Commission attempting to allocate revenues and expenses as between freight and passenger. I wish to call attention to the fact that the total railway accrual for 1941, the per cent of increase for the total was 172.05 for the system, but for 1942 over 1941, where he showed percentages of increase for taxes allocated to passenger revenue, the increase was 326.99, as compared with 172.05 for the entire line.

Q. This is simply an exhibit which was originally filed by the carriers?

A. Yes, sir.

Q. Before the Tennessee Commission in Docket 2535?

A. Yes, sir.

Q. Together with your additions thereto?

A. Yes, sir.

Q. And computations based on it?

A. Yes, sir.

Q. All right, next.

A. My exhibit, page 27, speaks for itself, and I want to say that we all agree that the soldiers should be given preference, but I want to call attention to the fact that soldiers on furlough cannot ride the limited trains, except by paying full fare.

Q. What is page No. 28?

[280]

*A. My page No. 28 shows the furlough fares, and it shows for whom these fares are available, and it shows also that these fares are not good on the limited trains, especially those streamline coach trains to which I have referred.

Now, I hesitate to say this, I hope I can finish this without being interrupted, but I hesitate to say what I am now constrained to say, for fear of being misunderstood or misquoted. The Tennessee Commission, like all others, wishes that the soldiers on furlough could ride free of charge, in lieu of the low fare of 1.25 cents per mile, and I sincerely hope that no action will be taken, that will have the effect of placing these low fares in jeopardy.

I seriously doubt the authority of the Interstate Commerce Commission to freeze the intrastate fares for civilians in Tennessee at 2.2 cents per mile, and continue the fare for our armed forces on furlough at 1.25 cents per mile. The Transportation Act makes no exception, and it is in direct conflict with the spirit of the Supreme Court of the United States in the case of the N. C. & St. L. vs. State of Tennessee, U. S. 362, 318.

EXAMINER McGRATH: That is argumentative.

THE WITNESS: Yes, I know it.

MR. GWATHMEY: Mr. Examiner, I ask that all reference to the fares charged to the soldiers while traveling on furlough

*[281]

be struck, for the reason that there is no proposal here to *increase those fares, and they are not in issue in the case.

EXAMINER McGRATH: I think that is understood, that is not in issue here.

MR. CLARK: We object to his testimony on that point further on the ground it is irrelevant and immaterial.

EXAMINER McGRATH: I think that objection is well taken.

Q. (By Mr. Jourolmon) Your next page is simply a dictionary definition of the word "excursion," and simply refers back to the other exhibit, and since that has been stricken, I do not think it will be admissible, so we will just pass that over. You simply were intending to introduce the definition of the word "excursion" to indicate that furlough trips do not constitute excursions, I think?

A. That is right.

Q. Page No. 30 is one excerpt, which you have taken from the order of the Commission in Ex Parte 148, which you wish to particularly bring to the attention of the Commission and speaks for itself?

A. That is right.

Q. Page No. 31, will you state what this is?

A. Page No. 31 is reports of the revenue and expenses compiled by the Association of American Railroads. It shows that for twelve months ended August 31, 1943, the railroads in the Southern District earned 7.07 per cent upon the book value of their property.

*[282]

*Q. Is that the only figure that you wish to call attention to on that?

A. Yes, sir.

Q. The exhibit also shows the revenues and expenses and net railway operating income of the class 1 railways?

A. Yes, sir.

Q. What is page 32?

A. Page 32 shows the rate of return on property investment for the same lines for the calendar year of 1941 to be only 4.35 per cent.

Q. Now, is that all of your exhibit, Mr. Hendley?

A. Yes, sir.

Q. In your experience as rate expert for the Tennessee Commission, have you had any experience with the abandonment of local service in the State of Tennessee by various carriers?

A. You mean abandonment of service, you mean abandonment of railway property?

Q. Of railway properties, trains, stations, and other matters of that sort?

A. I have for trains. We have no jurisdiction over the operations of trains other than the taking off of all passenger service. As for station, we have before us practically all the time petitions to abandon a station, especially the depot.

Q. Approximately how many such cases has the Commission

*[283]

*entertained within the course of the past year or so?

A. Within the course of the past year or so, we have had, I think, two or three stations on the I. C., two or three on the L. & N.,

one or two on the C. N. O. & T. P., and I should just guess in round numbers about thirty on the N. C. & St. L., that is for changing—in other words, to either abandon or tear down the depot itself and build a shelter in lieu thereof.

Q. How long or over what length of period has this program of curtailment of service been going on?

A. Ever since the depression started.

Q. Were you with the Tennessee Commission at the time that the 1.5 cents coach fare was established by certain carriers in Tennessee?

A. I was.

Q. What period was that?

A. I couldn't give you the exact period.

Q. Did you hear the testimony of Mr. Gaffney?

A. Yes, sir.

Q. Was that roughly correct as to the time?

A. I would be perfectly willing to accept his statement with reference to that.

Q. Will you state for the record what, if any action, was taken by the Tennessee Commission in the approval of these fares?

A. My recollection is that they first wanted to put in experi-

*[284]

*mental fares on certain branches, or at certain main line points, or I mean on certain divisions. And their argument for asking for that was that they were hauling empty coaches, and that they could have a few passengers in those coaches at no extra expense. But the Tennessee Commission ruled, if I remember correctly, and I am sure I do, that they could not put them in on one division and not on another, that they should take it all or none.

Q. Is that the only provision which the Tennessee Commission made at that time?

A. That is the only provision that I can remember right now.

Q. Since we met yesterday have you made any effort to find out whether the movement of troop trains in the aggregate constitutes a military secret?

A. I was advised by a member of the Transportation Committee appointed by the Governor, I believe, that while it would be a military secret for a month or two after it happened—

Q. You mean a particular movement, or you mean lots of movements?

A. Any movement, you mustn't say anything about it until for some months afterwards, but it was not a military secret four or five months after it happened.

MR. GWATHMEY: Mr. Jourolmon, will you permit me to interrupt and make a statement at this point, which may perhaps save further discussion of this kind?

*[285].

*MR. JOUROLMON: You can interrupt, yes, and I will be glad to hear your statement.

MR. GWATHMEY: Now, Mr. Examiner, in view of the fact that the question has arisen as to the propriety of putting in testimony concerning the movement of troop trains, and in view of the fact that counsel for the Commission has insisted that he will ask for a ruling from the Interstate Commerce Commission—

MR. JOUROLMON: I am not going to do that any more. I have got the information, so why should I?

MR. GWATHMEY: Let me finish, if you don't mind.

MR. JOUROLMON: Go ahead.

MR. GWATHMEY: We would prefer to ask that Mr. Gaffney's testimony as to the number of troop trains which were handled by his railroad during certain months be considered as withdrawn altogether from the record in the case. I do not consider it a matter of any material importance.

MR. JOUROLMON: I object to withdrawing any of that information from the record, as I do consider it a matter of considerable importance. It was originally placed in the record by the carriers, evidently without consideration of just what was involved, and without realizing that they were simply showing the great expense of interstate traffic, great additional expense of interstate traffic, and now that they have discovered the effect

*[286]

of what they put in the record, *they want to withdraw it.

MR. GWATHMEY: No, I am simply withdrawing it in order to avoid this further controversy and discussion on the subject and efforts to obtain rulings.

MR. JOUROLMON: There will be no necessity for any ruling.

MR. GWATHMEY: We have a right to ask that I be permitted to withdraw that testimony, and I now make that request.

MR. JOUROLMON: If that is done, I will simply have to call him as my witness and ask him to put the testimony back in, Mr. Examiner. It is already in the record; why withdraw it?

MR. GWATHMEY: All right, either way suits me, Mr. Examiner. I am perfectly willing to have it struck out of the record altogether.

Q. (By Mr. Jourolmon) Proceeding from the point where you had arrived, as I understand, you had just stated that general information about troop movement several months after the event is not a military secret, or secret military information?

A. I was so informed by a member of the Governor's Transportation Committee.

EXAMINER McGRATH: By "several months," what do you mean? That is rather general.

THE WITNESS: Three or four.

MR. JOUROLMON: Off the record.

(Discussion off the record.)

*[287]

*Q. (By Mr. Jourolmon) Was the particular member of the Transportation Committee or the State Defense Council a representative of one of the carriers which is a party to this suit?

A. He was.

Q. Please state his name?

A. Major Rutledge Smith.

Q. Who is he, and what capacity does he occupy or serve in with one of the carriers which are parties to this suit?

A. Assistant to the president of the Tennessee Central Railway.

Q. Did he give you the information as to whether troop movements in the State of Tennessee in the aggregate are interstate or intrastate, not with reference to any recent movements, but over the period of the past?

A. He stated positively that each and every movement was an interstate movement.

Q. You followed the testimony of Mr. Gaffney with reference to the unusual expenses incurred by the carriers in connection with passenger train operations under present conditions.

Have you gone over those various points? What was the first one of those points, the matter of troop trains?

A. The matter of troop trains—

Q. Will you refer to page 10 of—

EXAMINER McGRATH: Just a minute.

(Discussion off the record.)

[288]

Q. (By Mr. Jourolmon) Please state whether the items of expense which are referred to in Mr. Gaffney's testimony are predominantly interstate or intrastate in nature, with reference to troop movements, troop transportation in the first place?

A. It is predominantly, and I am informed and believe it is entirely interstate.

Q. Now, with reference to the use of protection for military movements, military personnel, in order to take care of the government requirements and afford protection to these troop movements, is that in interstate or intrastate?

A. It is predominantly interstate.

Q. With reference to the increase of the personnel in the general offices, what is that, predominantly interstate or intrastate?

A. I couldn't answer that, because all classes of people are traveling, and I couldn't say that, in connection with that particular item, whether it is interstate or intrastate.

Q. The matter of remodeling and modernizing the equipment, has that been predominantly for the interstate passengers or for the intrastate passengers?

A. Well, I should say that that would be upon the ratio of the interstate movement to that of the intrastate movement, and the figures have been presented by someone, showing how much

*[289]
passenger revenues were interstate, and how much were *intrastate.

MR. GWATHMEY: Mr. Examiner, I think it only proper to point out that Mr. Hendley is apparently dealing with this testimony as though it related only to the State of Tennessee. I call your attention to the fact that Mr. Gaffney's statement upon this subject is not confined to the N. C. & St. L. nor to the movement of traffic into or through the State of Tennessee or within Tennessee. It was a general statement relating to all of the railroads under present conditions.

Q. (By Mr. Jourolmon) Having heard this explanation, and having had these different points pointed out to you, do you see any necessity for changing your testimony, Mr. Hendley?

A. I see no necessity for changing it, and I will add that in the last analysis the net railway operating income is what counts, and I have put that in the record.

Q. Well, in your opinion as an expert, and taking into consideration all of these different conditions of transportation which have been described, do the standards and conditions of rail transportation offered to the average passenger traveling intrastate in Tennessee differ from those offered to the average passenger traveling interstate sufficiently to justify a difference in basic coach fares?

A. Passengers are not like hogs, cattle, or dead freight. They are free agents; they can travel on a train or not, as they see fit,
*[290]
and for that reason it depends to a large *extent upon the facilities offered as to whether or not they will travel at all. I have read with much interest the Federal Coordinator of Transportation's conclusion on his passenger traffic survey. Here are some of the conditions, or some of the fundamentals that he refers to as those which must be taken into consideration in considering a

passenger fare; air conditioning, modernized cars, speed, reduction in fares, safety—that should have come first—accessibility, hospitality, convenience, comfort, frequency, reserved accommodations, deluxe service, buffet and tavern service. And considering those fundamentals, I would say that interstate travelers into, out of, and across Tennessee should pay a much higher fare than the average local passenger in Tennessee.

MR. JOUROLMON: You may examine the witness.

CROSS-EXAMINATION

Q. (By Mr. Gwathmey) Mr. Hendley, suppose that this coach fare of 2.2 cents per mile should be maintained as it is being maintained interstate all through the Southern territory, and should also be maintained intrastate in all of the other Southern States. Would you still say that there are some conditions peculiar to the State of Tennessee which would require the maintenance of the lower fare intrastate in this state?

A. I certainly would. The geographical location of Tennessee is such that, as explained in connection with the streamlined

*[291]

*coach, no extra fare, reserved seat trains, that I think we can find absolutely nothing in the Transportation Act which says uniformity is the correct basis for rates.

Q. You are apparently willing and desirous of having the State of Tennessee, we might say, removed from the rest of the South, so far as this particular situation is concerned, is that correct?

A. No, sir, I think the State of Tennessee is the finest state in the Union.

Q. I am almost prepared to agree with you, not quite. You recall that Mr. Coke testified that he made these trips over various

branch lines of the N. C. & St. L. at your request. Apparently he did not make a trip over the Pikeville branch. Did you request him to make an inspection trip on that branch?

A. I did not.

Q. If he had made such a trip over that branch, would he not have found exactly the same sort of mixed train service?

A. I have no idea except that a mixed service is being given to the public on the Pikeville branch.

Q. You know that to be a fact, do you not?

A. I know that that is what they advertise in their timetables.

Q. Will you tell me why you did not tell Mr. Coke to make an inspection of the Pikeville branch?

A. The through traffic, that is from end to end on that branch, is interstate.

*[292]

*Q. Exactly.

A. The local traffic on that branch is distinctly intrastate.

Q. The Southern terminus of the Pikeville branch, that is the junction point with the main line, is across the state line in Alabama, isn't it?

A. I said it was interstate.

Q. So it is really an interstate branch, you might say?

A. Not as to local traffic.

Q. Now, you didn't ask Mr. Coke to make an inspection trip over the Huntsville branch, did you?

A. I think there are just about two miles of that branch in Tennessee.

Q. Exactly.

A. So I didn't think it was necessary.

Q. It extends on down to Huntsville, doesn't it?

A. It extends on down to Gadsden, Alabama.

Q. Isn't there exactly the same sort of mixed train service on that branch as on these other branches?

A. I don't know if it is the same sort at all or not, but I know it is advertised as being a mixed train service.

Q. Nothing but a mixed train service. That is also an interstate branch, isn't it, in that it extends outside of the State of Tennessee?

A. It is. Only a little over two miles of it are in Tennessee. For that reason I didn't think two miles were worthy of being

*[293]

*investigated.

Q. If you take all of these branch lines together, which you have enumerated on your exhibit, and add up the total revenue derived from passenger operations on those branches combined, if I tell you that it represents not more than $500 a month altogether, would you think that an excessive figure?

A. I take the position that in view of the fact that the coach is used in lieu of a caboose, that that mixed train is operated as a freight train, and there is no extra charge for those passengers that you get there, and it is just a pickup.

Q. You have not answered my question. Would you question my statement that the combined revenue from passenger operations on all of those trains put together would not amount to more than $500 a month?

A. I have not been on any of those branches. I am not qual-

ified to say whether it is correct or not correct, but I have no reason under the sun to dispute your word.

Q. Yes, sir. Now, in connection with the second page of your exhibit, you rather emphasized the fact that the Tennessee Central, whose lines happened to be located entirely in the State of Tennessee—.

A. Yes, sir.

Q. —showed a very marked increase in passenger revenues in 1943 over previous years. And isn't it true that there is a very large military encampment known as Camp Campbell at

*[294]

*Hopkinsville, or near Hopkinsville, Kentucky?

A. The rail head for Camp Campbell is in Tennessee.

Q. What?

A. The rail head for Camp Campbell is in Tennessee, and when the Tennessee Central Railway issued a tariff showing rates to and from Camp Campbell as being the same as some point in Kentucky, I immediately made him change it. I told him we were not going to have any Tennessee point, have the rates constructed to a Tennessee point on the basis of some point in Kentucky.

Q. What was your purpose in having that changed?

A. Because we wanted to have jurisdiction over them.

Q. I see. Now, isn't it a reasonable assumption that a very large part of that increased revenue of the Tennessee Central Railway in 1943 grew out of the handling of military traffic to and from Camp Campbell?

A. I have nothing upon which to base a reply, I know nothing of that, except I do know that at Camp Campbell there is quite a military establishment. What it does, I don't know.

Q. And you are not willing to agree that it is at least probably that a very large part of that increased revenue which the Tennessee Central Railway derived was in connection with traffic to and from that camp?

A. I would not be at all surprised if some of it wasn't due to that camp.

*[295]

*Q. It was at least important enough to cause your state commission to want to acquire jurisdiction as you have just stated?

A. We would have done that, had there not been a half dozen people there.

Q While you are indicating to the Examiner, let me say that same of these railroad men tell me that Edgoten, Kentucky, is the station for Camp Campbell?

A. That is what the Tennessee Central tried to make it, but we wouldn't let them. The rail head is in Tennessee.

Q. How is traffic destined to or from the camp billed?

A. I don't care how it is billed; Tennessee rates apply.

Q. You don't know whether it is billed to Edgoten or Hopkinsville, or where it is billed?

A. All I know is we would not let them put the rail head over into Kentucky, when it was in Tennessee.

Q. Is Camp Campbell a pretty large camp?

A. I have never been there.

Q. Aren't there some 60,000 or more men up there?

A. I have no idea.

Q. Will you turn to page 15 of your exhibit, which is a tariff of the N. C. & St. L., publishing their cafe coach seat fares?

A. Yes, sir.

Q. You stated, as I recall, that this tariff has never been filed with the Interstate Commerce Commission?

*[296]

*A. I said the copy on file in my office did not indicate that it had been filed.

Q. This tariff which you have produced is dated August 1, 1934?

A. Yes, sir.

Q. I will ask you to look at the current tariff which is effective August 10, 1940, and say whether or not it bears an I. C. C. number, "A-2481," cancelling I. C. C. number A-2392, thus showing that it is on file with the Interstate Commerce Commission.

A. Has this tariff ever been filed with the Tennessee Commission?

Q. Well, I don't know.

A. I will say it has not been filed with the Tennessee Commission. I would rather Mr. Gaffney would—

Q. I am merely calling your attention to the fact.

A. The tariff that you have shown me indicates that it has an I. C. C. number.

Q. Yes, sir.

A. I will say that.

MR. JOUROLMON: Is it an intrastate tariff or an interstate tariff?

THE WITNESS: I don't know. The tariff I have given reference to was the local rates in Tennessee.

*[297]

EXAMINER McGRATH: That is the current tariff, isn't it?

THE WITNESS: This tariff that I have right here.

MR. McGRATH: That is what I mean, the one that is excerpted at page 15 of your exhibit?

THE WITNESS: Yes, sir.

EXAMINER McGRATH: That is the current tariff?

THE WITNESS: That is current in Tennessee, yes sir.

MR. GWATHMEY: The tariff which I have shown Mr. Hendley bears exactly the same title and description as the tariff which he introduced. It reads "Local tariff of cafe coach seat fares between Chattanooga, Tennessee, and Memphis, Tennessee, and intermediate points, effective August 10, 1940."

MR. JOUROLMON: This is a different tariff.

MR. GWATHMEY: What did you say?

MR. JOUROLMON: This is a different tariff. This is between Memphis, Tennessee, and Nashville, Tennessee, and intermediate points.

MR. GWATHMEY: This reads "between Chattanooga, Tennessee, and Memphis, Tennessee, and intermediate points." This is the current tariff, Mr. Examiner, and if there is any question about it, it can be verified from the files of the Interstate Commerce Commission. I have given the I. C. C. number.

THE WITNESS: It is not the current tariff on Tennessee intrastate traffic.

*[298]

*Q. (By Mr. Gwathmey) Now, Mr. Hendley, you have pro-

duced as an exhibit a timetable of the Nashville, Chattanooga & St. Louis Railway. Will you tell me any place in that timetable at which it is stated in terms that the schedules and trains are not available for intrastate transportation in Tennessee? If it is in there, please show it to me.

A: The arrival and departure of those trains at each station, as set out in that timetable there, plainly indicate whether or not an intrastate passenger can ride.

Q. Quite so. But is there anything in the tariff which says that it will not apply, in the schedule, which says that it will not apply in connection with intrastate passengers?

A. The Dixie Flagler says so, in terms, yes.

Q. Where? You mean that note H?

A. Under H.

Q. That symbol tells where the train will stop to take on passengers?

A. Yes, sir.

Q. It doesn't say anything about interstate or intrastate, does it?

A. There are two points shown there in Tennessee, one is Nashville.

Q. In other words, don't you mean this—

A. No, I'll tell you what I mean.

*[299]

*Q. All right.

A. I mean that is the way that they advertise, and they cannot handle an intrastate passenger in Tennessee, because there is only one stop made, and that is at Nashville.

Q. All right. Now, are you sufficiently familiar with the trains of the N. C. & St. L. Railway to say whether or not one of the trains which probably handles more passengers than any other train is the so-called Dixie Flyer?

A. It has been some time since I have ridden on the Dixie Flyer, and I couldn't say.

Q. You don't know whether they handle a lot of passengers on that train?

A. Not of my own knowledge, no, I don't know.

Q. Well, now, that is train No. 94, and, according to this timetable, the Dixie Flyer is scheduled to stop either on signal or regularly at any number of points in Tennessee, is it not?

A. But not nearly so many points as your No. 6 and No. 7, which is what I would call the old-fashioned accommodation train.

Q. That is a local, isn't it?

A. Yes.

Q. Would you expect a through train like the Dixie Flyer to make as many stops as a local train?

A. No, because it is strictly an interstate train, predominantly!

*[300]

*Q. Why do you say it is strictly an interstate train predominantly, when the schedule shows it can be used and is used in Tennessee?

A. Because it won't stop at the stations to take on intrastate passengers.

MR. GWATHMEY: All right, sir. I think that is all I want to ask him.

Q. (By Mr. Clark) Mr. Hendley, let's see if I understand you. It is your testimony that there should be higher passenger rates charged on the so-called deluxe trains that you refer to?

A. My testimony looks to the fact that the railroads have voluntarily put those trains on, and they fixed the fare, including all of these comforts and conveniences, even to a tavern car, and that they have fixed the fare at 2.2 cents per mile, and that the rates, according to the coach rates in Tennessee, should be less than that.

Q. Then, your answer to the question is "Yes"?

A. My answer to the question is that you having fixed that as an interstate fare, that you cannot—you fixed that as an interstate fare, and before the Interstate Commerce Commission can raise the intrastate rates to the level of that interstate fare, they must prove, or we must prove a vast difference in the transportation condition, which we have proved.

*[301]

*MR. CLARK: Will you go back and read my first question, please? He hasn't touched it yet.

(Question read.)

THE WITNESS: My answer is that there should be a lower fare on the trains in Tennessee.

Q. (By Mr. Clark) Well, then, there should be two levels of fares, one on the deluxe train running into Nashville and stopping to let off passengers, you would have one fare, and the train carrying passengers from Nashville to Murfreesboro should have another level of fares, a lower one, is that right?

A. No, I should think so.

Q. All right.

A. You are asking for a 2.2—

Q. Now, wait a minute, Mr. Hendley. I am not discussing the thing in that detail. I am asking a particular question based on your testimony.

A. What is it?

Q. Just exactly as I said at the outset, do you think that the train, discharging the passenger from a deluxe train at Nashville should have one level of passenger rates, and the train operated from Nashville, we will say, to Tullahoma, or some other point within the state should have a lower rate?

A. The deluxe trains do not discharge or take on intrastate passengers at Nashville.

*[302]

*EXAMINER McGRATH: Well, your answer is not responsive to the question. Read the question, Mr. Reporter.

MR. CLARK: It is the first question all over again, Mr. Examiner.

MR. JOUROLMON: The first question has been answered.

MR. CLARK: No, it hasn't.

MR. JOUROLMON: Once or twice. Clearly he said that "I think there should be a lower fare on these other trains." If that doesn't answer the question—now, it has simply been repeated.

MR. CLARK: Will counsel say then that there should be a difference in level of the two services, one should be higher than the other?

MR. JOUROLMON: Counsel will speak to the Commission, and not to you.

MR. CLARK: Well, I asked the counsel if counsel would make that answer.

MR. JOUROLMON: No, I will not. When it comes to taking a position before the Commission, I will take the position I want to with reference to this or that, regardless of what the witness says. That is all there is to that.

MR. CLARK: I will come back and ask it again.

MR. JOUROLMON: The witness has answered the question.

EXAMINER McGRATH: It is not clear to me that he has.

MR. CLARK: He is far from answering it. May I ask it
*[303]
*again? In fact, may I go back and ask the reporter to read the first question?

EXAMINER McGRATH: Read the question and answer briefly and to the point.

MR. CLARK: Which we are floundering on.

(The question was again read.)

MR. JOUROLMON: Read the answer, and let's hear his answer to that.

MR. CLARK: There are several pages to that.

MR. JOUROLMON: Let's hear it.

EXAMINER McGRATH: Answer the question directly to the point at this juncture. If you want to qualify it, all right.

THE WITNESS: I will qualify it.

EXAMINER McGRATH: Answer it directly first.

THE WITNESS: Directly, it is—read it, it is just one or two pages.

EXAMINER McGRATH: No, we want you to answer now on the record, a direct answer to that question if you will, please.

THE WITNESS: Considering all of the comforts and conveniences and safety, hospitality, which the streamline coach trains offer, I think that their rates on those trains should be higher than the rates on the average passenger trains in Tennessee handling local traffic.

Q. (By Mr. Clark) Now, you mean that we should on the Southern Railway charge a higher rate on our Tennessean, for *[304]
example, *between Johnson City and Knoxville?

A. I am not familiar with that train.

Q. Have you never heard of the Southern Railway train, the Tennessean?

A. I may have heard of it, but I am not familiar with it, and besides it is not a streamlined coach train strictly.

Q. Mr. Hendley, may I ask you to refresh your recollection if it does not carry coaches with reserved seats, a tavern car, and most of the trimmings that you have referred to?

A. And in addition to that your folder shows it carries sleepers and parlor cars.

Q. Then you do know what the train carried. Why did you tell me you didn't?

A. I told you I was not familiar with it, and all I know about it is what I read in the timetable.

Q. Then if the timetable that you refer to shows it is a coach train, has reserved coaches, and tavern cars, are you proposing

that a higher rate should be charged from Johnson City to Knoxville?

A. No, I am proposing that the intrastate rate in Tennessee be lower than 2.2 cents per mile.

Q. That train known as 46 and 45 operates from Bristol through Chattanooga, does it not?

A. I haven't your timetable.

Q. You say you know all about the trains and service. Surely

*[305]

*you must know about that one?

A. I simply read the contents of that train to find out whether or not it was a streamlined coach train.

Q. Then you spoke in your answer to me a moment ago, you used the expression, "Average intrastate passenger in Tennessee." What is your idea of an average intrastate passenger in Tennessee?

A. I think right now 1.5 cents per mile would be the proper fare to charge in Tennessee.

Q. My dear sir, it might be one cent, but that is not the question I asked you. I said, "What is your idea of an average intrastate passenger in Tennessee"? You used the expression two or three times.

A. Take all of the trains that are operated in Tennessee upon which it is advertised that local passengers can ride intrastate, and I think there should be one fare.

Q. I am not asking you about the fare?

A. Of 1½.

Q. I am not asking you about the fare. You have compared passengers, interstate passengers, and intrastate passengers, and

in response to your counsel's questions, you used the expression, "Average interstate passenger, and the average intrastate passenger." You used them both, and I asked you what is an average intrastate passenger in Tennessee.

A. About the same as an average interstate passenger in

*[306]

*Tennessee; the passengers are the same.

Q. Then you made no distinction, using the inter in one and intra in the other?

A. Well, we are proposing to show you that the service offered to the intrastate passengers in Tennessee is not up to the service that you offer interstate passengers into and out of and across Tennessee.

Q. All right. Again I say what is the intrastate average passenger and the interstate average passenger?

A. I did not use the word—

Q. What kind of citizen or what kind of traveler have you in mind?

A. I should say a cross between the passenger service furnished in those cafe coach cars of the N. C. & St. L. Railway and the service handled on the branch lines.

Q. Your testimony seemed to indicate, and you did put forward that these branch lines on the N. C. & St. L., which were mentioned, should not be charged as high a rate as the deluxe trains. Were those the services and passengers and travelers that you had in mind as average intrastate passengers?

A. No, sir, I had every passenger that moved intrastate in Tennessee.

Q. Look at page 10 of the Southern Railway's folder, at the bottom.

A. I haven't it.

*[307]

Q. Marked "Tennessean." It says there, "Streamlined coach train between Washington and Memphis," is that right?

A. I don't know.

Q. Don't it say that? You said you had it?

A. No, I don't have it.

Q. Oh, well, I will let you see it.

A. What train is it?

Q. The Tennessean, at the bottom of the page in both places. Don't it say it is a streamlined coach train? Of course, it has in it some parlor cars, Pullman and sleepers on it, one comes to Nashville?

A. That is what I told you, it was not strictly the streamlined coach train.

Q. It carries all of the detail of tavern car and reserved seats that any other streamlined train carries, doesn't it?

A. But it is not a streamlined coach train strictly, and they are the ones I am making the comparison on.

Q. You did on page 28 of your statement refer to the Southern Railway trains 47 and 48, the Southerner, you picked that out, showed it, didn't you? How did you happen to know about it, and didn't know about the Tennessean?

A. I copied the tariff, furlough tariff.

Q. On what?

A. The furlough tariff, furlough rates, that was the note in

the furlough tariff that said you would not let them ride *on that train.

Q. But you did refer to it on that sheet of your exhibit?

A. I made a copy of the tariff.

Q. Just referred to it?

A. If it happened to be there.

Q. It is referred to on that page?

A. It was in the tariff, and we put it down. If I had not put it down, I would have been wrong.

Q. Don't you know that train does not touch the confines of Tennessee?

A. No, sir.

Q. In either direction?

A. No, sir, I don't know anything in the world about it.

MR. JOUROLMON: What train are we talking about?

MR. CLARK: I am talking about two trains, the Tennessean between Washington and Memphis and the Southerner between Washington and New Orleans. He refers to one and omits the other.

MR. JOUROLMON: Which one did he refer to?

THE WITNESS: I simply put it—

EXAMINER McGRATH: It is on page 28 of this exhibit?

THE WITNESS: Page 28 of the exhibit is just a copy of a tariff.

Q. (By Mr. Clark) Now, Mr. Hendley, at page 17 of your exhibit you referred to an operating ratio of the N. C. & St. L. Railway of 58.7 per cent. Do you remember that?

*[309]

*A. What number?

Q. Page 17, as I recall it, up at the top of the page, lefthand corner, if I recollect rightly.

EXAMINER McGRATH: 58.7.

THE WITNESS: 58.7.

MR. CLARK: 58.7.

Q. (By Mr. Clark) Do you see it there?

A. Yes, sir; I see it.

Q. Do you know how that operating ratio is arrived at, by what mathematical calculations?

A. No, I don't. All I know is that that statement was made by the president of the L. & N. Railroad, president of the Louisville & Nashville Railroad, and he stated in his annual report to stockholders that it was lower than any theretofore recorded.

Q. Now, then, if you made any observations of your own as to what that operating ratio meant, we are justified in assuming you know nothing about it, that that was a mistake on your part?

A. I know what the operating ratios are, and I put them in there.

Q. You made a statement that that represented so many cents out of every dollar. Now, if you don't know how you arrived at that figure, how do you know that is true?

A. Because your expenses were so much, and your revenues were so much, and if your revenues are such and such a percentage

*[310]

*of your—I mean if the expenses are a certain percentage of the—no, the operating ratio, of expense to revenues, that means it just takes so much to make a dollar.

Q. That was the statement you made, and that is exactly the reason I am examining you about it, because you have used "ratios" quite frequently?

A. Yes, sir.

Q. And I wanted to see if we are thinking about the same thing. Now, the operating ratio is total operating revenues divided into the total operating expenses, isn't that the way you obtain operating ratio?

A. I believe it is, yes.

Q. Then that would not include all elements that a railroad has to pay to make a living, for instance, what about taxes?

A. Taxes are included in there.

Q. Oh, no, taxes are not included in the operating expense. Surely you don't say that.

A. I think they are.

Q. Your statement is then that taxes are included within the operating expenses?

A. I have given you the information that I gathered from the reports to the Interstate Commerce Commission. They speak for themselves, and they will tell you exactly what it is.

Q. You made an observation in that connection that I think you are mistaken on.

*[311]

*A. I don't think so.

Q. Well, then if you say the taxes are included in operating

expenses, I am sure you are mistaken, because if you will turn to the last two pages of your exhibit, 31 and 32, you will find that they are not included in operating expenses. You might turn to them to refresh your recollection. You will find rents and taxes bring you down to what is known as "net railway operating income," which is a wholly different thing from the gross operating revenues and gross operating expenses, by which you obtain the operating ratio.

A. The operating ratio, I think, is from the net railway operating income.

Q. Well, if that is your idea of it, we will let that answer stand. Now, one more thing. You said that your jurisdiction, speaking of your Commission, went to the consideration of the taking off of passenger service where it was the last service on a given line. Was that right?

A. In order to get at that, why the roads were afraid that if they were to take—abandon all passenger services, that it would injure their charter rights, so an Act was passed through the Legislature permitting them to abandon all passenger train revenue under certain circumstances.

Q. Now, so much for that.

A. And the Commission should be the judge.

Q. Yes, sir, but you in your direct testimony said that your

*[312]

*jurisdiction, as I understood, was limited to that last passenger train service.

A. We have nothing to do with the operation of trains except that they must not discriminate.

Q. Now, let us take a case of where there are two trains in each direction, and the railroad proposes to take off one pair of trains. Would that operation be done without consulting you,

and you will have no jurisdiction in the premises, is that your testimony?

A. That is my understanding of the law.

MR. CLARK: That clears up a very much puzzling question that has puzzled me very much in the past. Thank you very much.

MR. GWATHMEY: In order to keep the record straight, I think it should be mentioned that the operating ratio of 58.7 per cent was that of the L. & N. Railroad Company, and not of the N. C. & St. L. Railway, as shown on page 17 of Mr. Hendley's exhibit.

MR. CLARK: I was stating it from memory.

EXAMINER McGRATH: Are there any further questions on cross-examination?

(No response.)

EXAMINER McGRATH: Is there anything further on redirect?

MR. JOUROLMON: Yes, one or two.

REDIRECT EXAMINATION

Q. (By Mr. Jourolmon) Mr. Hendley, let's turn back to *[313] page 15 *of the timetable of the N. C. & St. L. Railway. Referring you to the schedules of the Dixie Flyer, train No. 94 on this, how many unlimited stops are made by the Dixie Flyer in Tennessee at which it can pick up intrastate passengers?

A. That is 94?

Q. Yes, on 94.

A. Seven, including Nashville.

Q. Wait a minute. How many unlimited stops?

A. Oh, unlimited stops.

Q. How many unlimited stops can it make?

A. Nashville, Murfreesboro, and Tullahoma.

Q. Just three stops?

A. Yes.

MR. GWATHMEY: May I ask what Counsel means by an unlimited stop?

MR. JOUROLMON: Well, I mean by an unlimited stop a stop in which a passenger does not have to wave a flag, ring a bell, park an automobile in front of the train or something like that to make it stop.

MR. GWATHMEY: You mean a regular stop?

MR. JOUROLMON: Yes.

MR. GWATHMEY: As distinguished from a flag stop, is that it?

MR. JOUROLMON: Yes.

Q. (By Mr. Jourolmon) What is involved in having intra-
*[314]
state *service between any other points on that carrier, that particular schedule?

A. There are three other stops—four, four other stops that bear the signal "fx" stops, No. 94 stops at Cowan, Decherd, Wartrace, Smyrna, Tennessee, to let off revenue passengers from points beyond Chattanooga, Tennessee, and to receive revenue passengers for Evansville, Louisville, Memphis, and beyond.

Q. So those are interstate stops?

A. With the exception of Memphis.

Q. A person could go from one of those points by way of Nashville and down to Memphis?

A. Yes, sir.

Q. Is that the same with reference to those other trains on that Division, or are there other trains that have regular stops at all of those points?

A. That train that goes through in the night, leaving Chattanooga at 1.35 a.m., getting to Nashville at 6:40 a.m., has seven regular stops.

Q. So it is possible for an intrastate passenger to travel in the small hours of the morning and make local stops intrastate, is that right?

A. Yes.

Q. All right. Now, there was a great deal of cross-examination on the simple point of the average rates. Are the rates *in Tennessee and in the South and in the country as a whole established on the basis of a separate rate for every train, depending on the facilities offered?

*[315]

A. It depends upon what kind of a car you ride in. If you ride in a Pullman or parlor car, you pay about half as much again as you would in the day coach.

Q. Taking the day coach service, is there a separate fare for every train of the different railroads over the country, for day coach travel?

A. Not that I know of.

Q. I asked the question of Mr. Gaffney, and he never had

heard of this idea, when I said aren't rates made on the basis of an average, a composite, and he was astounded at the thought. Do you understand what I mean by saying that rates are made by a composite process, or an average of cost?

A. With passengers, they being free agents, to do as they please, I think the rates are made upon just—you might say as high as business will stand, just as high as you can get them to ride your train.

Q. You don't know what I mean then by saying that fares and other rates are established on the average of the service that is rendered?

A. I don't think so.

Q. All right.

A. I want to qualify that last answer, except as to where there

*[316]

*is such a vast difference and where all of those fundamentals that I said were considered. When you have one train that gives you everything that is nice and proper and hospitable, why it is certainly worth more on that train than it would be in any other train, and the railroads themselves by charging extra fares when you get in an air-conditioned car acknowledge the fact that it is worth more. They consider it is worth more to ride in an air-conditioned car than they consider it worth to ride in a day coach not air conditioned.

EXAMINER McGRATH: Are there any further questions now?

MR. JOUROLMON: Go ahead and clear me up, Mr. Clark.

EXAMINER McGRATH: No, I prefer that you continue.

MR. JOUROLMON: I am through, but he said he wanted to clear me up.

MR. CLARK: I wanted to ask Mr. Hendley this question, which I think will clear it. The basic passenger fare has been prescribed by the Interstate Commerce Commission, and the State Commissions for years and years, has it not?

THE WITNESS: It has been permitted.

MR. CLARK: It has been really prescribed.

THE WITNESS: I think it has been permitted.

MR. CLARK: Hasn't the Interstate Commerce Commission passed on that by decisions?

MR. McGRATH: Is there any need to argue that point with the witness?

MR. CLARK: I thought perhaps I could refresh his recollec-
*[317]
tion. *We will pass it up with that.

EXAMINER McGRATH: Are there any further questions of this witness?

MR. JOUROLMON: No more.

EXAMINER McGRATH: You are excused.

(Witness excused.)

EXAMINER McGRATH; Exhibit 11 will be received.

(Exhibit 11, witness Hendley, received in evidence.)

EXAMINER McGRATH: Does that complete the testimony on behalf of the Tennessee Commission?

MR. JOUROLMON: No, I think I ought to make a ltitle statement.

EXAMINER McGRATH: We will take a brief recess.
(Short recess.)

LEON JOUROLMON, JR., was sworn and testified as follows:

DIRECT EXAMINATION

THE WITNESS: Mr. Examiner, my name is Leon Jourolmon, Jr. I am appearing here as Counsel for the Railroad and Public Utilities Commission of Tennessee. I am also a member of the Railroad and Public Utilities Commission of Tennessee, and have been since November 17, 1936.

In the course of the testimony of Mr. Gaffney yesterday, the question came up as to the notice of the action of the Interstate

*[318]

*Commerce Commission with reference to the original petition filed by the carriers for the purpose of increasing the basic interstate coach fares from 1.65 cents per mile to 2.2 cents per mile. At this time the statement was made that I as a member of the Tennessee Commission sat with the Interstate Commerce Comsion in Ex Parte 148, and accordingly should have known of the action taken by the Commission in that matter.

I simply wish to clarify this point. I sat, by invitation of the Interstate Commerce Commission, as a cooperating Commissioner in the original hearing in Ex Parte 148, which was held in St. Louis in the early part of 1942.

Thereafter I sat in the reopened proceedings which was held in Washington, D. C., in February, 1943. The cooperating committee was not called by the Commission at the time it considered the petition asking for the increase of southern coach fares. I received no notice of the fact that this was a part of the Ex Parte 148 proceeding, and did not even know that it was a part of Ex Parte 148 until I began to study this case.

That is all.

EXAMINER McGRATH: Are there any other questions?

CROSS-EXAMINATION

Q. (By Mr. Gwathmey) You will agree with me, will you not, that the order which the Interstate Commerce Commission
*[319]
entered *in Ex Parte 148, dated August 1, 1942, whereby the railroads in the southeast were authorized to increase the interstate coach fare to 2.2 cents per mile related entirely to the southeastern railroads, and that prior to that time the interstate fares in other parts of the country had already been put on the basis of 2.2 cents?

A. That is correct, yes.

EXAMINER McGRATH: Does that complete your statement?

MR. JOUROLMON: That is all, yes sir.

EXAMINER McGRATH: Is there any further testimony on behalf of the Tennessee Commission?

MR. JOUROLMON: No, the Tennessee Commission closes its presentation.

MR. MILLER: The Price Administrator would like to put on a witness.

MRS. DORIS S. WHITNACK was sworn and testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Miller) Will you state your name and business address for the record, please?

A. Doris S. Whitnack, address Second and D Streets Southwest, Washington, D. C.

Q. With whom are you employed?

A. I am employed by the Office of Price Administration in the Transportation and Public Utilities Division.

*[320]

*Q. Will you state the position that you hold and in general the duties that you perform?

A. I hold the position of Transportation Economist within the Division which I previously named, and in general am in charge of the economic analyses done in that Division in connection with transportation.

Q. Will you describe briefly in general your experience and training in this sort of work?

A. Well, starting with the most recent and going backwards, I have been with the transportation branch of O. D. T. since it was originally set up in the spring of 1941. Prior to that time I worked with the National Resources Planning Board for two years, and was Transportation Economist there, and prior to that time was Construction Economist. Before that time I was in college, graduated from Radcliffe with a degree in economics.

MR. MILLER: Let's go off the record, Mr. Examiner, and identify these exhibits.

EXAMINER McGRATH: Yes.

(Exhibits 12 through 16, inclusive, witness Whitnack, marked for identification.)

Q. (By Mr. Miller) Mrs. Whitnack, in connection with your official duties, were you given the task of preparing evidence in connection with this case?

A. Yes.

*[321]

*Q. Have you prepared some exhibits to be presented at this hearing?

A. I have.

Q. Will you please start with Exhibit No. 12 and go through the exhibits, naming each one by number and making such explanation as you deem necessary?

A. Exhibit No. 12 is as indicated in the title, "Net Railway Operating Income Before Federal Income Taxes," for eight principal carriers operating in Tennessee.

The purpose of the exhibit is to show the large increase in net railway operating income before federal income taxes principally since the war. There are two figures, well there is one figure I should like to point out particularly, and that is the net income before income taxes for the twelve months ending September 30, 1943. This income is shown for the total of eight roads, and is approximately $157,000,000, or 132 per cent over 1941, and about $207,000,000, or 299 per cent over the year 1940.

MR. CLARK: Will you show me where those figures are?

THE WITNESS: Those are strictly subtraction figures and are not all on the exhibit. You can easily subtract and see where I got the figures.

MR. GWATHMEY: You spoke of millions of dollars, and I don't see any figures on this exhibit.

THE WITNESS: There is a statement in the title, that dollar

*[322]

*figures are in thousands.

MR. GWATHMEY: Oh, I see, thank you.

EXAMINER McGRATH: Off the record.

(Discussion had off the record.)

MR. CLARK: What did you subtract?

THE WITNESS: I presume you are referring to the comparison I made for the twelve months ending September 30, 1943, with previous years? You will find that subtracting, let's say $118,809,000 from $275,706,000 you will get a figure which is approximately $157,000,000.

MR. CLARK: That is all right. Thank you. I see where you get it now.

THE WITNESS: The other figure was calculated in exactly the same way. Referring to Exhibit No. 13, our purpose in presenting this exhibit is to show the improvement, particularly in the last two years, in operating ratio for the freight and passenger service, and particularly for the passenger service.

The method of estimating 1943 through the first nine months of the year is shown on page 2 of this exhibit. I should point out in this connection that page 2 explains the method by which the operating expense, or by which operating expenses were assigned to the passenger service, and likewise how operating revenues were assigned to passenger service. The determination of the

*[323]

relative proportion going to freight, *and hence the calculation of the operating ratio, is based on a subtraction of our estimated passenger revenues and expenses from the total revenues and expenses.

We have tested this method against the actual figures reported by the carriers as their operating ratio for the two services in previous years, and we find the method extremely accurate. Just for those of you who are statistically or mathematically inclined, the accuracy is indicated in the figures of page 2 of the exhibit for the coefficient of correlation which was 98.6, and the standard error of estimates was two-tenths of one per cent.

I only mention that so that anyone who is interested in statistics will have some notion of its validity.

Q. (By Mr. Miller) Can you explain in layman's language just about how much chance of error there is in that estimate according to the test as applied to actual figures?

A. I think maybe this will make it clear, in pretty plain English. If the correlation between the two factors on which we base this—namely, the ratio of passenger expenses to railway operating expenses, as compared with the ratio of passenger car-miles to total transportation car-miles, if the relationship were absolutely perfect, you would have a coefficient of correlation of 100 per cent—98.6 you can see comes very close to it. That is only the measurement of the relationship, and that is what that coefficient means.

*[324]

*Now, standard of error of estimates means that that measures the accuracy of your estimate based upon your previous study of the relationship and the degree of correlation. Now, the larger the standard of error of estimate, the more inaccurate your estimate based on your studies is apt to be. Two-tenths of one per cent is an extremely low figure, hence the probability that any estimate which you made would be very far from the actual figure is reduced to almost nothing.

Now, the most significant thing to point out about the exhibit are the large drops in the passenger operating ratio, where 1942 you can see dropped 37.5 points from 1941, and our estimate for 1943 is 16.5 points. I don't mean percentage, but points, below 1942.

I think that it is also very important to note that, according to our estimate, the passenger ratio for these eight roads is now below the freight operating ratio. I think this is particularly important in light of the statement made by the I. C. C. in its

report of April 6, in the reopening of Ex Parte 148, regarding the relative position of the two services, in so far as operating ratios are concerned.

MR. CLARK: May I ask a question for clarification?

EXAMINER McGRATH: For clarification, yes.

MR. CLARK: On Exhibit 13, Mrs. Whitnack, you have in pen "Estimated," under the heading of the last column. Does that apply to the passenger and the freight, or just to the passenger?

*[325]

*THE WITNESS: Both passenger and freight.

MR. CLARK: Where did you find the necessity to use estimated in connection with freight?

THE WITNESS: Well, I don't think, sir, that you report any operating ratio on freight to the Interstate Commerce Commission.

MR. CLARK: That is the reason you estimated in both instances?

THE WITNESS: Yes.

MR. CLARK: I see.

THE WITNESS: I would have been glad to have taken the figure if I could have gotten it without going to all of this trouble.

MR. CLARK: I have marked "Estimated" over the head of both columns.

THE WITNESS: Yes, those yearly figures go for both passenger and freight, and the estimated is likewise.

Now, Exhibit No. 14, I should like to note some corrections

which, I think, have been written in on all of your exhibits in ink. On the line marked "Total," the column headed "% Increase, Freight Revenue 12 months ended 9/30/43 over year 1938," the figure should be 128.8 per cent. In the corresponding column under the year 1939 the figure should be 105.6 per cent, and the corresponding column for the year 1940 should be 92.2.

*[326]

*MR. CLARK: For the year 1943, it should be 1941 at the top?

THE WITNESS: Yes, that is a typographical error.

Q. (By Mr. Miller) All right, proceed.

A. Now, the Commission in several cases has stated that freight rates were set at levels to correct deficiencies in aggregate earnings arising out of the inability of the passenger service to meet its full share of the revenue burden.

MR. CLARK: Should we have references?

EXAMINER McGRATH: Are you going to give references?

THE WITNESS: I will be glad to give you references. One case in point is the fifteen per cent case, 1937-38. I don't have the page number, but I could reproduce that.

EXAMINER McGRATH: What is the volume?

MR. MILLER: I have a copy of it.

THE WITNESS: 226, I think it is.

MR. GWATHMEY: It appears on the bottom of your Exhibit 16, I think.

THE WITNESS: Oh, that's right.

MR. GWATHMEY: 226, I. C. C. 161.

THE WITNESS: That is a particular page, I think it is 41. Yes, 226, I. C. C. 41 is the beginning of the case. I don't know what page this quotation comes from.

EXAMINER McGRATH: Is that the only case you had in mind?

THE WITNESS: No, then there is the "Increases in Pas-
*[327]
senger *Fares and Surcharges, 1936," and I don't have the citation on that.

MR. MILLER: They have cited that—your first witness cited that in his testimony.

MR. GWATHMEY: Increase in passenger charge?

MR. MILLER: 214, I. C. C. 255, isn't it?

MR. GWATHMEY: Docket 26550.

MR. MILLER: 214, I. C. C. 174, is that it?

THE WITNESS: Yes.

Q. (By Mr. Miller) Proceed.

A. Since the time when these cases or decisions to which I have just referred were made, the passenger deficit has decreased, and in fact disappeared. But the factor in the freight rates, which was included as a support factor for the passenger deficit has not been removed, and in fact by virtue of the large increases in volume of revenue has been multiplied, and multiplied substantially. That fact is shown by the statements here of the increase in freight revenue for the twelve months ended September 30, 1943, as compared with the total for the roads indicated in the past years. As it works out now, the freight revenue for the twelve months period that I have indicated is over twice as great

as it was in 1938, when there was a considerable passenger deficit. Now, in the period when there is no passenger deficit that support factor has been more than doubled.

*[328]

*I refer now to Exhibit 15. Now, I would like to note some corrections in ink on this exhibit.

EXAMINER McGRATH: If they have been made on all of the copies, it won't be necessary to restate them.

THE WITNESS: They have been made on all of the copies. I just wanted it in the record that we had noted some.

EXAMINER McGRATH: The record copy has been corrected.

THE WITNESS: The purpose of this exhibit is to show what the rate of return is, calculated on various bases, and I think it is clearly indicated as to how each of the last three columns showing the rate of return were computed.

Exhibit 16 is more or less a companion exhibit to 15, and they should be considered together. In Exhibit 16 we took the latest decision of the Interstate Commerce Commission where there was any authoritative statement on the rate of return of the carriers generally, and compared these rates of return figured on the various bases outlined in Exhibit 15 with the rate of return before federal income taxes, figured on the final value as established by the Commission in the fifteen per cent case.

And I should like to point out that figuring the rate of return on the Commission's final value for the Southern Region in the year 1937 the rate of return was 3.1 per cent, and the other bases vary somewhat from that, either above or below, as indicated here.

*[329]

*Q. (By Mr. Miller) Can you describe which of these bases is like the basis proposed by witness Tassin in this proceeding?

A. He figures after income taxes, as far as his basis is concerned. It should be most likely figures shown on line 13, which for the year 1937 would have been considerably below the—

Q. How does that basis compare with the final value selected by the Commission for the Southern Region in the fifteen per cent case?

A. That basis is 129.7 per cent of the final value established by the Commission, whereas a base figured on the net book investment, plus cash and materials and supplies, would have equaled ninety-three per cent of the Commission's final valuation.

Q. The net book investment is the investment figure before or after depreciation?

A. The net in there indicates that it is figured after depreciation, and that is indicated in the sources by the accounts which have been deducted.

MR. MILLER: Mr. Examiner, I believe the exhibits otherwise speak for themselves, and we offer them in evidence.

MR. CLARK: We object to one phase. I object to line one on Exhibit 16 which is merely stated here as "final value of all the lines in Southern Region." I appreciate that the witness may

*[330]

select any figure from a report of the *Commission, and may discuss it, and base her own conclusion thereon, but I wish to point out that we do not consider that a finding of final value of these railroads. That was not done in that case, so I object to it being just accepted as a final valuation of these several railroads because it was not exactly that.

THE WITNESS: That is a quotation from the report of the Commission. It is so-called in the decision in the case.

EXAMINER McGRATH: Your objection will be noted of record.

MR. CLARK: Yes, sir.

EXAMINER McGRATH: And considered?

MR. CLARK: Yes, sir.

EXAMINER McGRATH: In the absence of objection, the exhibits are received, Exhibits 12 to 16, inclusive.

(Exhibits Nos. 12 to 16, inclusive, witness Whitnack, received in evidence.)

MR. MILLER: The witness is available for cross-examination.

CROSS-EXAMINATION

Q. (By Mr. Gwathmey) Mrs. Whitnack, may I ask you, are you familiar with the petition which the O. P. A. filed with the Interstate Commerce Commission on July 31, 1943, asking that Commission to institute a general investigation of passenger fares in the South?

A. I am generally familiar with it, but not enough to answer any questions on it.

*[331]

*Q. Did you assist in preparing that petition?

A. No, I didn't have any direct work on that.

Q. Are you able to say whether or not, except that the data used in the petition related to the Southern roads as a whole, and the data used in your exhibits here relate to the railroads operating in Tennessee, there is any essential difference between the information which was contained in the petition and relied upon by the O. P. A. and the data which you have submitted here?

A. I certainly couldn't say since I don't know what is in that

petition. However, I don't think that—I certainly have not done this same sort of thing myself before entirely for a case, so I don't know where they would have gotten it all from.

Q. Is it not true that in that petition the O. P. A. did set out a very complete statement of the earnings of the railroads operating in the South from both passenger and freight operations over a period of years, including the latest years available?

A. Well, I think I started off by saying that I don't know what is in that petition, and I really am not prepared to say.

MR. MILLER: I prepared that petition; if you want to direct some questions at me, I will be glad to answer them.

MR. GWATHMEY: I am willing to let it stand. Of course,

*[332]

the petition has been incorporated by reference into this *record and will speak for itself. I merely wanted to ask the witness that question. That is all.

EXAMINER McGRATH: Are there any further questions?

Q. (By Mr. Clark) On Exhibit 15, column headed 3, you show three accounts as included in column 3.

A. Yes.

Q. There you have taken that data for the operating railroads. You have not included in those figures anything in the way of the property of leased roads; the lessor properties have not been included?

A. No, only the investment on the balance sheet of the reporting company.

Q. If the railroad, say the Southern, is using a property which it holds under lease, that property, as property is in the accounts and records of the owning or lessor company?

A. That is correct.

Q. And yet it is used by the Southern in the railroad and transportation service?

A. That is right.

MR. CLARK: I think that is all. Thank you.

MR. MILLER: A little redirect examination.

EXAMINER McGRATH: All right.

REDIRECT EXAMINATION

Q. (By Mr. Miller) In relation to the last question asked by Mr. Clark, has any consideration been given, Mrs. Whitnack,
*[333]
*in these calculations to that matter of using the property leased from other railroads?

A. Yes, we gave some consideration to that point in this respect; column 8 shows—

Q. Which exhibit?

A. On Exhibit 15, column 8, there is a statement for each of these eight carriers of the rent for leased road and equipment shown in account No. 542. We just made a further calculation, deducting such rent from net railway operating income before income taxes, and have compared the resulting figure as shown in column 9 with the book investment in transportation property in order to get the rate of return shown in column 11, I believe it is—yes, in column 11. That gives some recognition to the fact that leased lines are considered.

Q. In Exhibit 16 is that calculation shown so that we can

see what relation it might bear to the final value set forth in the fifteen per cent case?

A. Yes. That is the rate of return shown in line 14.

Q. Is it more or less than that based upon the Commission's base?

A. It is somewhat less than that figured on the Commission's base, but slightly more than on the investment in railway property used in transportation service, plus the cash and materials and supplies.

MR. MILLER: That is all on redirect examination.

*[334]

*EXAMINER McGRATH: Are there any further questions? That appears to be all. Does that complete the testimony for the O. P. A.?

MR. MILLER: Yes, sir.

EXAMINER McGRATH: You may be excused.

(Witness excused.)

EXAMINER McGRATH: Is there any testimony in rebuttal?

MR. CLARK: I would like to put Mr. Tassin back for just one question.

J. S. TASSIN, having been previously sworn, testified further as follows:

DIRECT EXAMINATION

Q. (By Mr. Clark) You have been sworn before in this case?

A. Yes.

Q. You are the same Mr. Tassin?

A. Yes.

Q. Did you hear Mrs. Whitnack just a moment ago refer to the figures shown on column numbered 2 on her Exhibit 15 as comparable figures which you had used, and her comment in that connection?

A. Yes.

Q. What have you to say about that?

A. The figures that I have used correspond to the sum of columns 2 and 5 as shown on Exhibit No. 15. But because of the
*[335]
confusion between cost and value in this Exhibit No. 15, *I want the record to be sure that I have nowhere dealt with value, but confined myself to considerations of cost.

MR. CLARK: That is all, sir.

EXAMINER McGRATH: Are there any questions?

MR. MILLER: No.

MR. GWATHMEY: That is all.

EXAMINER McGRATH: Is there any further testimony?

(No response.)

EXAMINER McGRATH: Do the parties desire to file briefs?

MR. GWATHMEY: Yes, sir.

MR. JOUROLMON: Yes, your Honor, the Tennessee Commission would like to file a brief.

EXAMINER McGRATH: I shall fix the date for filing of briefs as of January 4, 1944.

MR. JOUROLMON: That is one month from today.

EXAMINER McGRATH: Yes. If there is nothing further the hearing in this proceeding is closed.

(At 4:30 o'clock p.m. on Friday, December 3, 1943, the hearing was closed.)

BEFORE THE

INTERSTATE COMMERCE COMMISSION

DOCKET No. 29037

TENNESSEE INTRASTATE FARES

EXHIBITS

TENNESSEE PASSENGER FARES
ICC DOCKET No. 29037
EXHIBIT No. 2
WITNESS, Gaffney

NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY

Examples of possible reductions of INTERSTATE Coach Fares by passengers buying tickets to nearest State line station, and re-buying or paying cash fare on train to INTERSTATE DESTINATION.

	From	To	Per Mile	
1—Nashville	Tenn.	Hickman Ky.	2.2¢ (Interstate)	3.78
Nashville	Tenn.	Woodland Mills Tenn.	1.65¢ (Intrastate)	2.65
Woodland Mills	Tenn.	Hickman Ky.	2.2¢ (Interstate)	.26
		Interstate fare reduced.		.87
2—Nashville	Tenn.	Jackson Miss.	2.2¢ (Interstate)	10.06
Nashville	Tenn.	Memphis Tenn.	1.65¢ (Intrastate)	4.00
Memphis	Tenn.	Jackson Miss.	2.2 (Interstate)	4.68
		Interstate fare reduced.		1.38
3—Memphis	Tenn.	Murray Ky.	2.2¢ (Interstate)	3.70
Memphis	Tenn.	Puryear Tenn.	1.65¢ (Intrastate)	2.65
Puryear	Tenn.	Murray Ky.	2.2 (Interstate)	.29
		Interstate fare reduced.		.76
4—Memphis	Tenn.	Guthrie Ky.	2.2¢ (Interstate)	4.77
Memphis	Tenn.	Beldon Tenn.	1.65¢ (Intrastate)	3.50
Beldon	Tenn.	Guthrie Ky.	2.2 (Interstate)	.10
		Interstate fare reduced.		1.17
5—Mitchellville	Tenn.	Athens Ala.	2.2¢ (Interstate)	3.41
Mitchellville	Tenn.	Prospect Tenn.	1.65 (Intrastate)	2.35
Prospect	Tenn.	Athens Ala.	2.2 (Interstate)	.36
		Interstate fare reduced.		.70
6—Chattanooga	Tenn.	Asheville N. C.	2.2¢ (Interstate)	5.32
Chattanooga	Tenn.	Wolf Creek Tenn.	1.65¢ (Intrastate)	3.25
Wolf Creek	Tenn.	Asheville N. C.	2.2¢ (Interstate)	1.06
		Interstate fare reduced.		1.01
7—Johnson City	Tenn.	Dalton Ga.	2.2¢ (Interstate)	5.02
Johnson City	Tenn.	Chattanooga Tenn.	1.65¢ (Intrastate)	3.65
Chattanooga	Tenn.	Dalton Ga.	2.2¢ (Interstate)	.84
		Interstate fare reduced.		.53

GEOGRAPHICALLY CORRECT MAP OF

THE NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY

AND CONNECTIONS

SCALE OF MILES

TENNESSEE PASSENGER FARES
I. C. C. Docket No. 29037
EXHIBIT NO. 1
Witness, Gaffney

Copyright 1942, by Poole Bros., Inc., Chicago

7064

TENNESSEE PASSENGER FARES
ICC DOCKET No. 29037
EXHIBIT No. 2
WITNESS, Gaffney

NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY

Examples of possible reductions of INTERSTATE Coach Fares by passengers buying tickets to nearest State line station, and re-buying or paying cash fare on train to INTERSTATE DESTI-

	From	To		Per Mile		
8—	Oneida, Tenn.	Valley Head, Ala.		2.2¢	(Interstate)	3.78
	Oneida, Tenn.	Chattanooga, Tenn.		1.65¢	(Intrastate)	2.15
	Chattanooga, Tenn.	Valley Head, Ala.		2.2¢	(Interstate)	.92
		Interstate fare reduced.				.71
9—	Nashville, Tenn.	Roanoke, Va.		2.2¢	(Interstate)	11.04
	Nashville, Tenn.	Bristol, Tenn.		1.65¢	(Intrastate)	5.85
	Bristol, Tenn.	Roanoke, Va.		2.2¢	(Interstate)	3.36
		Interstate fare reduced.				1.83
10—	Johnson City, Tenn.	Franklin, Ky.	Via So. Ry.	2.2¢	(Interstate)	8.32
	Johnson City, Tenn.	Mitchellville, Tenn.	TC-	1.65¢	(Intrastate)	6.45
	Mitchellville, Tenn.	Franklin, Ky.	L&N	2.2¢	(Interstate)	.14
						1.73

TENNESSEE PASSENGER FARES
I. C. C. Docket No. 29037
EXHIBIT No. 3
Witness, Gaffney

NASHVILLE CHATTANOOGA & ST. LOUIS RAILWAY

Examples showing the fares paid for transportation good in coaches by INTERSTATE passengers as compared with fares paid by INTRASTATE Tennessee passengers for approximately the same distance:

	From		To		Distance	Fare Per Mile	One Way Coach Fare	
1—	Nashville	Tenn.	Stevenson	Ala.	113.1	2.2	2.60	Interstate
	Nashville	Tenn.	McKenzie	Tenn.	117.1	1.65	2.00	Intrastate
			Difference				.60	
2—	Bruceton	Tenn.	Paducah	Ky.	86.5	2.2	1.87	Interstate
	Bruceton	Tenn.	Whiteville	Tenn.	85.7	1.65	1.45	Intrastate
			Difference				.42	
3—	Columbia	Tenn.	Decatur	Ala.	74.8	2.2	1.65	Interstate
	Columbia	Tenn.	Gallatin	Tenn.	73.7	1.65	1.30	Intrastate
			Difference				.35	
4—	Nashville	Tenn.	Mannington	Ky.	90.9	2.2	2.02	Interstate
	Nashville	Tenn.	Prospect	Tenn.	91.3	1.65	1.55	Intrastate
			Difference				.47	
5—	Chattanooga	Tenn.	Asheville	N. C.	240.3	2.2	5.32	Interstate
	Chattanooga	Tenn.	Bristol	Tenn.	241.9	1.65	4.05	Intrastate
			Difference				1.27	
6—	Harriman	Tenn.	Alexander	N. C.	168.9	2.2	3.78	Interstate
	Harriman	Tenn.	Nashville	Tenn.	165.6	1.65	2.75	Intrastate
			Difference				1.03	
7—	Jackson	Tenn.	Knoxville	Tenn.	385.1	2.2	8.18	Interstate
	Jackson	Tenn.	Knoxville	Tenn.	369.7	1.65	c 6.95	Intrastate
			Difference				1.23	

c—Includes 70 cents transfer at Nashville, Tenn.

NASHVILLE CHATTANOOGA & ST. LOUIS RAILWAY

Examples showing the fares paid for transportation good in coaches by INTERSTATE passengers as compared with fares paid by INTRASTATE Tenniessee passengers for approximately the same distance:

	From		To		Distance	Fare Per Mile	One Way Coach Fare	
8—	Memphis	Tenn.	Knoxville	Tenn.	426.1	2.2	a 9.39	Interstate
	Memphis	Tenn.	Knoxville	Tenn.	455.9	1.65	b 7.10	Intrastate
			Difference				2.29	
	All points beyond Knoxville, Tenn. are affected to the same extent as Knoxville proper.							
9—	Nashville	Tenn.	Barnesville	Ga.	348.9	2.2	7.73	Interstate
	Nashville	Tenn.	Bristol	Tenn.	347.8	1.65	6.65	Intrastate
			Difference				1.08	
10—	Memphis	Tenn.	Hot Springs	Ark.	202.6	2.2	4.24	Interstate
	Memphis	Tenn.	Clarksville	Tenn.	203.0	1.65	3.40	Intrastate
							.84	

a–Via Sou. Ry. direct.
b–Via NC&StL.-Nashville-TC-Harriman-Sou. Ry.

Exhibit No. 4
Witness Gaffney

STATEMENT SHOWING THE ONE-WAY INTERSTATE COACH FARES FROM OR TO LOUISVILLE AND NASHVILLE RAILROAD POINTS IN TENNESSEE COMPARED WITH FARES BASED ON COMBINATION OF FARES TO OR FROM INTERMEDIATE TENNESSEE POINTS

Line		One Way Interstate Coach Fare		One Way Coach Fare	Difference in Fares
1			Memphis, Tenn., to Clarksville, Tenn	$3.40	
2	Memphis, Tenn., to		Clarksville, Tenn., to Louisville, Ky	3.96	
3	Louisville, Ky	$8.40			
				$7.36	$1.04
4			Memphis, Tenn., to Clarksville, Tenn.	3.40	
5	Memphis, Tenn., to		Clarksville, Tenn., to Bowling Green, Ky	1.43	
6	Bowling Green, Ky	$5.87		$4.83	$1.04
7			Memphis, Tenn., to Clarksville, Tenn	3.40	
8	Memphis, Tenn., to		Clarksville, Tenn., to Evansville, Ind	2.90	
9	Evansville, Ind	$6.89		$6.30	$0.59
10			Nashville, Tenn., to Pulaski, Tenn	1.30	
11	Nashville, Tenn., to		Pulaski, Tenn., to Birmingham, Ala	2.79	
12	Birmingham, Ala	$4.55		$4.09	$0.46
13			Nashville, Tenn., to Pulaski, Tenn	1.30	
14	Nashville, Tenn., to		Pulaski, Tenn., to Montgomery, Ala	4.95	
15	Montgomery, Ala	$6.67		$6.25	$0.42
16			Humboldt, Tenn., to Clarksville, Tenn	2.00	
17	Humboldt, Tenn., to		Clarksville, Tenn., to Henderson, Ky	2.46	
18	Henderson, Ky	$4.95		$4.46	$0.49
19			Paris, Tenn., to Clarksville, Tenn	1.15	
20	Paris, Tenn., to		Clarksville, Tenn., to Hopkinsville, Ky	.84	
21	Hopkinsville, Ky	$2.38		$1.95	$0.43
22			Knoxville, Tenn., to Etowah, Tenn	.99	
23	Knoxville, Tenn., to		Etowah, Tenn., to Atlanta, Ga	3.01	
24	Atlanta, Ga	$4.33		$4.00	$0.33
25			Etowah, Tenn., to Knoxville, Tenn	.99	
26	Etowah, Tenn., to		Knoxville, Tenn., to Cincinnati, Ohio	6.56	
27	Cincinnati, Ohio	$7.88		$7.55	$0.33
28			LaFollette, Tenn., to Etowah, Tenn	1.95	
29	LaFollette, Tenn., to		Etowah, Tenn., to Atlanta, Ga	3.01	
30	Atlanta, Ga	$5.50		$4.96	$0.54

TARIFF AUTHORITIES

	Interstate	Intrastate
31	L. & N. R. R. G. P. D. 10805, I. C. C. 8323.	L. & N. R. R. G. P. D. 10365, I. C. C. 8034.
32	L. & N. R. R. G. P. D. 10797, I. C. C. 8315.	L. & N. R. R. G. P. D. 10351, I. C. C. 8022.
33	L. & N. R. R. G. P. D. 10799, I. C. C. 8317.	L. & N. R. R. G. P. D. 10502, I. C. C. 8128.
34	L. & N. R. R. G. P. D. 10794, I. C. C. 8312.	L. & N. R. R. G. P. D. 10362, I. C. C. 8032.
35	L. & N. R. R. G. P. D. 10802, I. C. C. 8320.	

October 28, 1943.

Exhibit No. 5
Witness Gaffney

STATEMENT SHOWING THE TENNESSEE INTRASTATE ONE-WAY COACH FARES FROM OR TO REPRESENTATIVE L. & N. R. R. POINTS IN TENNESSEE COMPARED WITH THE INTERSTATE FARES FROM OR TO POINTS ON THE L. & N. R. R. IN TENNESSEE FOR EQUI-DISTANT TRIPS; ALSO SHOWING THE AMOUNTS TENNESSEE INTRASTATE UNDER THE INTERSTATE FARES

	Intrastate				Interstate				Coach Fare Amount	
			Coach Fare							Intrastate
Line	From	To	Miles	One-Way	From	To	Miles	One-Way	Under	Interstate
1	Springfield Tenn.	Goodlettsville Tenn.	16.6	$.33	Holton Tenn.	Williamsburg Ky.	16.4	$.37	$.04	
2	Nashville Tenn.	Franklin Tenn.	18.8	.33	Cedar Hill Tenn.	Trenton Ky.	17.9	.40	.07	
3	Memphis Tenn.	Brunswick Tenn.	21.2	.39	Adams Tenn.	Pembroke Ky.	21.4	.48	.09	
4	Knoxville Tenn.	Dossett Tenn.	26.9	.50	Clarksville Tenn.	Ferguson Ky.	27.1	.62	.12	
5	Nashville Tenn.	Gallatin Tenn.	27.6	.50	Pulaski Tenn.	Athens Ala.	28.3	.62	.12	
6	Nashville Tenn.	Springfield Tenn.	30.1	.55	Benton Tenn.	Chatsworth Ga.	30.2	.70	.15	
7	Knoxville Tenn.	Lake City Tenn.	39.5	.66	Adams Tenn.	Kelly Ky.	38.9	.88	.22	
8	Knoxville Tenn.	Madisonville Tenn.	42.5	.72	Corbin Ky.	Habersham Tenn.	41.1	.92	.20	
9	Nashville Tenn.	Portland Tenn.	41.9	.72	Hopkinsville Ky.	Springfield Tenn.	41.5	.92	.20	
10	Nashville Tenn.	Columbia Tenn.	46.1	.83	Bowling Green Ky.	Gallatin Tenn.	45.3	1.03	.20	
11	Knoxville Tenn.	LaFollette Tenn.	53.0	.94	Nashville Tenn.	Franklin Ky.	52.2	1.17	.23	
12	Nashville Tenn.	Lewisburg Tenn.	54.3	.94	Nashville Tenn.	Trenton Ky.	55.3	1.25	.31	
13	Nashville Tenn.	Pleasant Grove Tenn.	55.5	.99	Danville Tenn.	Guthrie Ky.	56.4	1.25	.26	
14	Knoxville Tenn.	Duff Tenn.	59.2	.99	Bowling Green Ky.	Hendersonville Tenn.	57.1	1.28	.29	
15	Knoxville Tenn.	Etowah Tenn.	60.0	.99	Mitchellville Tenn.	Horse Cave Ky.	60.2	1.36	.37	
16	Memphis Tenn.	Brownsville Tenn.	59.6	.99	Columbia Tenn.	Athens Ala.	61.5	1.36	.37	
17	Nashville Tenn.	Lynnville Tenn.	63.8	1.10	Clarksville Tenn.	Bowling Green Ky.	63.6	1.43	.33	
18	Knoxville Tenn.	Chaska Tenn.	66.4	1.15	Springfield Tenn.	Nortonville Ky.	65.7	1.47	.32	
19	Memphis Tenn.	Bells Tenn.	72.4	1.20	Nashville Tenn.	Bowling Green Ky.	72.9	1.61	.41	
20	Knoxville Tenn.	Jellico Tenn.	78.1	1.30	Springfield Tenn.	Madisonville Ky.	76.9	1.72	.42	
21	Knoxville Tenn.	Ocoee Tenn.	78.8	1.30	Gallatin Tenn.	Horse Cave Ky.	78.3	1.72	.42	
22	Memphis Tenn.	Humboldt Tenn.	84.5	1.45	Nashville Tenn.	Crofton Ky.	84.9	1.87	.42	
23	Nashville Tenn.	Prospect Tenn.	91.3	1.55	Etowah Tenn.	Cartersville Ga.	88.9	1.98	.43	
24	Memphis Tenn.	Milan Tenn.	95.8	1.65	Nashville Tenn.	Nortonville Ky.	95.8	2.13	.48	
25	Memphis Tenn.	McKenzie Tenn.	115.9	2.00	Nashville Tenn.	Decatur Ala.	120.9	2.68	.68	
26	Memphis Tenn.	Paris Tenn.	133.1	2.25	Franklin Tenn.	Cullman Ala.	134.4	2.97	.72	
27	Prospect Tenn.	Mitchellville Tenn.	137.0	2.35	Atlanta Ga.	Etowah Tenn.	136.5	3.01	.66	
28	Chaska Tenn.	Ocoee Tenn.	145.2	2.50	Knoxville Tenn.	Cartersville Ga.	148.9	3.30	.80	
29	Memphis Tenn.	Danville Tenn.	159.9	2.65	Nashville Tenn.	Hanceville Ala.	162.9	3.59	.94	
30	Memphis Tenn.	Erin Tenn.	174.5	2.90	Knoxville Tenn.	Richmond Ky.	173.3	3.81	.91	
31	Memphis Tenn.	Cumberland City Tenn.	181.4	3.05	Louisville Ky.	Nashville Tenn.	186.5	4.11	1.06	
32	Memphis Tenn.	Clarksville Tenn.	203.0	3.40	Nashville Tenn.	Birmingham Ala.	205.4	4.55	1.15	

TARIFF AUTHORITIES

	Intrastate		Interstate	
33	G. P. D. 10364, I. C. C. 8033	G. P. D. 10351, I. C. C. 8022	G. P. D. 10775, I. C. C. 8307	G. P. D. 10776, I. C. C. 8308
34	G. P. D. 10370, I. C. C. 8038	G. P. D. 10365, I. C. C. 8034	G. P. D. 10803, I. C. C. 8321	G. P. D. 10797, I. C. C. 8315
35	G. P. D. 10362, I. C. C. 8032	G. P. D. 10358, I. C. C. 8028	G. P. D. 10799, I. C. C. 8317	G. P. D. 10802, I. C. C. 8320
36	G. P. D. 10502, I. C. C. 8128			

October 28, 1943

I. C. C. Docket No. 29037
Exhibit No. 6
Witness Tassin

BEFORE THE

INTERSTATE COMMERCE COMMISSION

IN THE MATTER OF

PASSENGER FARES AND CHARGES FOR INTRASTATE TRAFFIC

BETWEEN POINTS IN TENNESSEE

STATISTICAL FINDINGS AND DATA IN SUPPORT THEREOF

Line No.

STATISTICAL FINDINGS AND DATA IN SUPPORT THEREOF

1. Had increase sought in intrastate passenger fares and charges between points in Tennessee been in effect between December 1, 1942 and September 30, 1943, $452,915 would have been earned by 7 principal roads parties to this petition. Had these increases been in effect between October 1, 1942 and September 30, 1943, the increase would have been $556,280; between March 1, 1942 and February 28, 1943, the increase would have been $424,040.

2. In common with practically all railroads, for many years past with the exception of the year 1942, passenger operations of these railroads have been in the red. From 1936 to 1940, both inclusive, in a range from 23 to 28 millions of dollars, the average deficit was 27 millions. In 1941 there was a drop to 19 millions; in 1942 there was an income of 16 millions. The average deficit for the 7-year period (1936–42) was 19 millions. The 6-year cumulative deficit (1936 to 1941, both inclusive) was 150 millions, in order to equalize which between 9 and 10 years as good as 1942 will have to be experienced.

3. Railroads of the Southern Region in common with railroads of the country in general are chronically in need of additional revenue. For example, for the average of 10 years (1921–30) Class I Railroads of Southern Region earned only 4.20% on their investment in railway property used in transportation service. For the succeeding 12 years (1931–42) the yield was but 2.48%, while for the 22-year period (1921–42) it was only 3.23%.

4. Specifically, for the 22-year period (1921–42) the 12 roads parties to this petition averaged as a group only 3.45% on their investment.

5. Weighting the return for each road in proportion to mileage operated entire line in comparison with in the State of Tennessee produces 3.36% and 3.39% respectively.

6. This means that if a 5¼% return on investment is to be realized, revenues for the entire line should be increased by 11%, and as related to the State of Kentucky by 10%

7. That the basis of measurement (investment in railway property used in transportation service) here utilized is conservative, is evidenced by the fact that 11% additional would have had to be raised in order to reproduce these properties as of January 1, 1940.

8. For the average year of 7 (1936–42) and for 11 roads parties to this petition the freight operating ratio was 63 as compared with a passenger operating ratio of 110.

9. Adding to railway operating expenses the net income deduction for railway tax accruals and operating rents, we produce an outgo ratio for freight of 74 as compared with 126 for passenger.

10. From 1936 to 1940, inclusive, passenger carrying cars on the average earned 16¢

Line No.

per car mile. In 1941 that jumped to 20¢; in 1942 to 38¢; the average for the 7-year period being 20¢.

11. Cars in baggage, mail, express and milk service, popularly known as head-end cars, in a range from 24 to 28 cents, earned on the average 25¢. This is 5¢ a mile more than earned by the rear-end or passenger-carrying cars.

12. For the average year of 6 (1937–42) passengers in coaches paid on the average 1.59¢ per mile in a range from 1.45¢ to 1.77¢.

13. For the average of 6 years (1937–42) passengers in Pullman cars paid on the average 2.33¢ per mile in a range from 2.25¢ to 2.36¢.

14. For the 6-year period (1937–42) passenger coaches earned on the average 27¢ per mile in a range from 19¢ to 48¢.

15. For the 6-year period (1937–42) Pullman cars earned 27¢ per mile in a range from 20¢ to 47¢.

16. The total of railway tax accruals for the year 1942 increased 329% over what it was in 1936.

17. Railway tax accruals assigned to passenger under rules prescribed by the I. C. C. in 1942 were 231% in excess of what they were in 1936.

18. The general average rate of hourly compensation was 25% greater in 1942 than it was in 1936.

19. For Southern Region as a whole, the index of average unit prices of railway materials and supplies, including fuel, was 40% higher in June 1943 than it was on October 1, 1936.

20. For the 5-year period (1916–20) 12 roads parties to this proceeding averaged 68 passengers per train.

21. For the 10-year period (1921–30) the average was 49 passengers per train.

22. For the 10-year period (1931–40) the average was 37 passengers per train.

23. These roads averaged 62 passengers per train in 1941; 120 in 1942; and 189 for the first 8 months of 1943.

24. For the 5-year period (1916–20) these roads averaged 18 passengers per car.

25. For the 10-year period (1921–30) they averaged 12 passengers per car.

26. For the 10-year period (1931–40) they averaged 9 passengers per car.

27. In 1941 they averaged 14 passengers per car; in 1942, 22, and during the first 8 months of 1943, 31.

28. For the 6-year period (1937–42) these roads averaged 17 passengers per coach.

29. For the 6-year period (1937–42) they averaged 12 passengers per Pullman car.

LOSS IN PASSENGER REVENUE REFLECTED BY WHAT WOULD HAVE ACCRUED HAD INCREASE SOUGHT IN INTRASTATE FARES BEEN IN EFFECT IN THE STATE OF TENNESSEE DURING THE PERIODS SHOWN BELOW

Road	Loss in Intrastate Revenue Year Ended 2/28/43	Year Ended 9/30/43	10 Mos. Ended 9/30/43
The Alabama Great Southern Railroad Company	----------	----------	----------
Carolina, Clinchfield and Ohio Railway C. C. & O. Ry. of South Carolina Lessees: ACL and L&N	$ 1,364	$ 2,058	$ 1,771
Central of Georgia Railway Company	----------	----------	----------
The C. N. O. & T. P. Railway Company	8,898	12,972	11,162
Gulf, Mobile & Ohio R. R. Co.	415	536	464
Illinois Central R. R. Co. Y. & M. V. R. R. Co.	567	856	736
Louisville & Nashville R. R. Co.	85,757	115,718	99,812
The N. C. & St. L. Ry.	194,234	240,215*	181,511*
St. Louis-San Francisco Ry.	----------	----------	----------
Southern Railway Company	132,805	183,925	157,459
Tenn., Ala. & Ga. Ry. Co.	----------	----------	----------
Tennessee Central Railway Co.	----------	----------	----------
Total	$424,040	$556,280	$452,915

*12 and 9 mos. ended Aug. 1943. SOURCE: Audit Departments of the several roads.

Line No.

NET RAILWAY OPERATING INCOME OR DEFICIT—PASSENGER

(As required to be computed by I. C. C. and Annually Reported Thereto)

Railroads Operating in State of Tennessee

(Petitioners in this Proceeding)

Line No.	Roads	1936	1937	1938	1939	1940	1941		1942	Average
6	A. G. S.	448,904	335,008	517,617	568,243	585,759	32,693	I	359,804	304,060
7	Clinchfield	91,828	429,061	124,231	131,743	112,151	89,613		84,999	109,089
8	Central of Ga.	1,453,501	1,532,399	1,817,508	1,699,567	1,879,644	1,190,126	I	389,128	1,311,960
9	C. N. O. & T. P.	686,431	413,027	790,206	908,079	804,385	423,651	I	615,097	475,669
10	G. M. & O.	1,006,978	994,335	1,047,561	1,107,153	1,308,317	1,180,424		592,500	1,033,895
11	I. C. (Inc. Y. & M. V.)	7,469,920	4,456,110	5,281,958	5,656,189	6,436,582	5,873,061		578,425	5,107,464
12	L. & N.	5,429,064	5,887,764	6,556,946	6,404,436	6,815,661	4,915,654	I	2,069,686	4,848,548
13	N. C. & St. L.	648,694	761,372	824,626	841,791	764,263	675,092	I	709,082	543,822
14	St. L.-S. F.	4,569,015	4,676,233	5,106,317	4,789,464	4,423,543	3,349,768	I	3,679,728	3,319,230
15	Southern	3,898,261	4,121,888	4,928,905	4,808,631	5,222,582	927,593	I	9,748,714	2,022,722
16	Tenn. Central	59,683	74,920	93,338	114,276	123,965	140,975		84,185	98,763
17	Total	25,762,279	23,382,217	27,008,213	27,029,572	28,476,852	18,798,560	I	16,231,130	19,175,222
18	Cumulative deficit 1936-41									$150,457,693
19	Years like 1942 required to wipe out									9

Note—Net Railway Operating Income not separated as between freight and passenger for T. A. & G.

SOURCE—Annual Reports to I. C. C.

I—Denotes Income.

342

SOUTHERN REGION
REVENUES, EXPENSES AND NET INCOME
RAILWAYS OF CLASS I—YEARS 1921-1942

Year	Investment in Railway Property used in transportation service a	Total Operating Revenues	Total Operating Expenses	Taxes	Net Railway Operating Income Amount	Rate of Return		Net Income
1921	$2,544,543,693	$ 684,727,318	$ 589,349,969	$ 30,058,104	$ 57,840,946	2.27%		$ 7,841,591
1922	2,591,156,704	711,489,119	554,924,589	37,636,117	109,666,782	4.23		55,791,992
1923	2,740,319,955	807,900,577	627,558,235	42,177,128	129,644,627	4.73		77,307,309
1924	2,848,043,577	787,949,317	594,875,149	44,982,899	142,445,074	5.00		86,311,303
1925	2,989,626,741	846,581,262	616,488,300	50,957,634	167,565,759	5.60		112,068,078
1926	3,155,883,365	874,464,159	646,031,708	53,857,054	163,040,381	5.17		105,154,742
1927	3,236,589,190	813,166,422	618,642,232	50,644,073	136,488,509	4.22		77,275,619
1928	3,292,527,033	771,814,281	582,088,993	50,940,833	133,545,258	4.06		72,234,490
1929	3,324,161,166	767,324,856	579,047,334	51,147,375	132,634,559	3.99		73,059,468
1930	3,338,881,112	641,628,178	503,008,762	42,974,495	88,405,628	2.65		30,866,079
Avg. 1921-30	3,006,173,253	770,704,548	591,201,527	45,537,572	126,128,361	4.20		69,810,548
1931	3,321,736,996	515,584,069	424,823,685	36,863,350	44,119,880	1.33	D	22,562,485
1932	3,300,356,863	377,781,440	312,379,830	31,784,693	25,802,843	0.78	D	48,626,465
1933	3,245,727,101	388,514,453	291,234,184	28,256,926	39,677,490	1.24	D	16,048,078
1934	3,214,398,995	408,242,449	315,267,590	27,034,974	54,520,803	1.70	D	19,228,469
1935	3,182,822,004	429,651,453	342,529,025	28,079,336	49,301,947	1.55	D	24,736,251
1936	3,174,468,831	500,904,542	371,241,330	37,018,915	80,146,408	2.52		10,743,969
1937	3,155,343,353	516,590,873	390,355,654	39,199,291	74,160,012	2.35		6,601,155
1938	3,173,336,647	471,305,776	357,486,929	42,056,626	60,224,023	1.90	D	9,734,450
1939	3,183,259,365	512,031,356	378,090,035	43,853,775	79,592,778	2.50		11,667,811
1940	3,184,435,186	545,276,358	404,502,838	48,623,247	81,939,906	2.57		15,726,581
1941	3,273,594,731	698,242,859	472,968,083	76,418,137	138,673,394	4.24		74,845,799
1942	3,338,644,861	1,052,924,537	622,964,370	194,186,597	214,151,928	6.41		153,250,208
Avg. 1931-42	$3,229,010,410	$ 534,754,180	$ 390,336,964	$ 52,781,156	$ 80,190,951	2.48		$ 10,991,594
Avg. 1921-42	$3,127,720,794	$ 642,004,348	$ 481,639,038	$ 49,488,617	$ 101,071,592	3.23		$ 37,727,482

D-Denotes Deficit. a-includes allowance for working capital.

SOURCE—Association of American Railroads—Bureau of Railway Economics.

AVERAGE ANNUAL RATES OF RETURN—1921-1942, INCLUSIVE

RAILROADS OPERATING IN STATE OF TENNESSEE

(PETITIONERS IN THIS PROCEEDING)

Line No.		Investment in Railway Property Used in Transportation Service, incl. Cash & Matl. and Supplies	Net Railway Operating Income	Rate of Return
8	Alabama Great Southern	$ 36,581,632	$ 1,631,507	4.46
9	Clinchfield	72,291,593	2,847,657	3.94
10	Central of Georgia	105,027,438	2,847,492	2.71
11	C. N. O. & T. P.	77,391,113	4,259,704	5.50
12	G. M. & O.	104,792,228	2,861,641	2.73
13	I. C. (Incl. Y. & M. V.)	683,211,408	22,360,840	3.27
14	L. & N.	469,700,457	17,700,720	3.77
15	N. C. & St. L.	99,179,915	2,473,903	2.49
16	St. L.-S. F.	424,309,155	12,686,465	2.99
17	Southern	612,069,932	22,891,307	3.74
18	T. A. & G.	1,373,071	41,830	3.05
19	Tennessee Central	8,553,880	305,099	3.57
20	Total	$ 2,694,484,822	$ 92,908,165	3.45

21 SOURCE: Reports of Carriers to Bureau of Ry. Economics, Ass'n. of American R.R.'s, and the I.C.C. (beginning in 1936).

Line No. 5 Page 7 of 31 pages

AVERAGE RATES OF RETURNS—1921-1942
Weighted in Proportion to Miles of Road Operated at Close of Year 1942
Railroads Operating in State of Tennessee
(Petitioners in This Proceeding)

	Entire Line			In State of Tennessee		
Roads	Miles	Return	Weighting	Miles	Return	Weighting
A. G. S.	315.14	4.46	1,406	9.61	4.46	43
Clinchfield	308.31	3.94	1,215	56.22	3.94	222
Central of Georgia	1,815.65	2.71	4,920	4.04	2.71	11
C. N. O. & T. P.	336.58	5.50	1,851	137.35	5.50	755
G. M. & O.	1,968.91	2.73	5,375	296.05	2.73	808
I. C. (Inc. Y. & M. V.)	6,365.47	3.27	20,815	356.71	3.27	1,166
L. & N.	4,744.58	3.77	17,887	893.57	3.77	3,369
N. C. & St. L.	1,090.00	2.49	2,714	784.08	2.49	1,952
St. L.-S. F.	4,670.55	2.99	13,965	18.34	2.99	55
Southern	6,513.78	3.74	24,362	679.74	3.74	2,542
T. A. & G.	94.63	3.05	288	7.85	3.05	24
Tenn. Central	285.71	3.57	1,020	269.42	3.57	962
Total	28,509.31	3.36	95,818	3,513.05	3.39	11,909

SOURCE—Mileage from annual reports to I. C. C.; Return computed on basis data furnished by carriers to Bureau of Railway Economics, A. of A. R.

Line No. 6 Page 8 of 31 pages

FACT AND EXTENT OF REVENUE NEED
AVERAGE YEAR OF 22 (1921-42, INCLUSIVE)
WEIGHTED IN PROPORTION TO MILES OF ROAD OPERATED AT CLOSE OF YEAR 1942
RAILROADS OPERATING IN STATE OF TENNESSEE
(PETITIONERS IN THIS PROCEEDING)

	Entire Line			In State of Tennessee		
Road	Miles	Ratio	Weighted	Miles	Ratio	Weighted
Ala. Great Sou.	315	105	33,075	10	105	1,050
Clinchfield	308	116	35,728	56	116	6,496
Central of Ga.	1,816	114	207,024	4	114	456
C. N. O. & T. P.	337	101	34,037	137	101	13,837
G. M. & O.	1,969	114	224,466	296	114	33,744
I. C. (Incl. Y. & M. V.)	6,365	110	700,150	357	110	96,552
L. & N.	4,745	108	512,460	894	108	96,552
N. C. & St. L.	1,090	115	125,350	784	115	90,160
St. L.-S. F.	4,671	116	541,836	18	116	2,088
Southern	6,514	110	716,540	680	110	74,800
T. A. & G.	95	108	10,260	8	108	864
Tenn. Central	286	106	30,316	269	106	28,514
Total	28,511	112	3,171,242	3,513	110	387,831

SOURCE—Mileage from Annual Reports to I. C. C. Ratios are computed from detail of investment in railway property used in transportation service (incl. Cash & Mtl. & Supplies) and gross railway operating income and outgo furnished by carriers to Bureau of Ry. Economics, A. A. R.

Line No. 7 Page 9 of 31 pages

ELEMENTS OF VALUE OF PROPERTY USED IN COMMON CARRIER SERVICE
AS OF JANUARY 1, 1940
RAILROADS OPERATING IN STATE OF TENNESSEE
(PETITIONERS IN THIS PROCEEDING)

Road	Basis A Production Cost	Basis B Reproduction Estimate	Current Appraisal Lands	Current Appraisal Working Capital	Capital Outlay Basis A	Capital Outlay Basis B
A. G. S.	$ 35,341,407	$ 36,599,880	$ 3,198,083	$ 230,100	$ 38,769,390	$ 40,028,063
Clinchfield	48,909,591	52,237,313	905,700	414,400	50,229,691	53,557,413
C. of G.	106,525,026	127,121,978	11,127,123	979,500	118,631,649	139,228,601
C. N. O. & T. P.	91,057,859	98,087,557	4,901,295	699,600	96,658,754	103,688,432
G. M. & O.	86,144,899	100,411,738	4,573,433	2,085,700	92,804,032	107,070,871
I. C. (Inc. Y.&M.V.)	654,433,168	716,737,862	79,713,664	5,951,000	740,097,832	802,402,526
L. & N.	500,444,673	569,677,300	25,805,045	8,377,500	534,627,218	603,859,845
N. C. & St. L.	79,152,374	96,871,316	11,848,679	1,662,800	92,663,853	110,382,795
St. L.-S. F.	298,731,038	331,703,737	20,092,158	4,132,500	322,955,696	355,928,395
Southern	493,419,141	575,189,378	46,116,614	5,732,800	545,268,555	627,038,792
Tenn. Central	14,435,770	17,432,081	995,537	170,800	15,602,107	18,598,418
Total	$2,408,594,946	$2,722,070,120	$209,277,331	$ 30,436,700	$ 2,648,308,977	$2,961,784,151
Ratio	100	113			100	112

Reproduction estimate	$2,722,070,120
Current land appraisal	209,277,331
Total	$2,931,347,451
As compared with returned under Schedule 211N	2,632,392,818
Excess investment presently required	11%

SOURCE: Exhibit A-11, Ex Parte No. 148.

Line No. 8 Page 10 of 31 pages

FREIGHT AND PASSENGER OPERATING RATIOS
RAILROADS OPERATING IN STATE OF TENNESSEE
(PETITIONERS IN THIS PROCEEDING)

	1936		1937		1938		1939		1940		1941		1942		Average	
	Frt.	Pass.	Frt.	Pass.	Frt.	Pass.	Frt.	Pass.	Frt.	Pass.	Frt.	Pass.	Frt.	Pass.	Frt.	Pass.
Alabama Great Southern	66	116	66	111	65	128	59	132	58	127	57	81	49	54	58	92
Clinchfield	54	170	51	198	53	194	46	222	46	195	40	164	41	144	46	181
Central of Georgia	73	138	77	139	76	157	76	154	74	154	64	117	56	77	70	123
C. N. O. & T. P.	53	116	55	106	59	117	55	118	46	117	47	96	51	62	52	96
G. M. & O.	65	161	70	161	68	173	68	184	69	205	62	154	59	121	65	165
I. C. (incl. Y.&M.V.)	65	133	67	116	65	120	65	123	67	127	64	118	61	94	64	116
L. & N.	65	130	68	134	67	143	65	142	65	144	58	119	56	72	62	115
N. C. & St. L.	78	125	80	125	72	126	70	128	70	124	65	113	62	70	69	107
St. L.-S. F.	70	157	73	154	77	165	73	162	70	158	65	127	62	71	69	127
Southern	62	112	65	109	62	115	60	116	61	118	58	94	55	57	60	93
Tennessee Central	67	131	70	138	69	152	69	163	69	167	69	176	71	118	69	145
Total	65	129	68	124	66	131	65	132	64	133	60	111	58	72	63	110

Statistics for Tenn. Ala. & Ga. not available.
SOURCE: Reports of carriers to the Interstate Commerce Commission.

Line No. 9 Page 11 of 31 pages

FREIGHT AND PASSENGER OUTGO RATIOS
RAILROADS OPERATING IN STATE OF TENNESSEE
(PETITIONERS IN THIS PROCEEDING)

	1936		1937		1938		1939		1940		1941		1942		Average	
	Frt.	Pass.	Frt.	Pass.	Frt.	Pass.	Frt.	Pass.	Frt.	Pass.	Frt.	Pass.	Frt.	Pass.	Frt.	Pass.
A. G. S.	76	144	74	131	66	151	65	158	68	164	75	102	87	90	75	121
Clinchfield	37	192	51	224	59	227	52	256	55	227	50	186	41	144	51	204
Cent. of Ga.	80	157	83	158	84	182	83	179	81	179	71	137	69	94	77	143
C. N. O. & T. P.	62	135	64	100	65	138	62	148	64	139	68	116	82	88	68	116
G. M. & O.	78	184	83	138	83	195	81	206	84	231	78	207	80	133	81	179
I. C. (Inc. Y.&M.V.)	75	143	71	124	75	134	76	137	76	141	74	131	77	102	75	127
L. & N.	70	150	74	153	74	164	72	163	73	164	71	136	84	93	75	135
N. C. & St. L.	83	129	87	132	80	138	78	138	79	133	76	123	80	88	80	119
St. L. S. F.	75	174	77	171	83	189	78	183	76	177	70	142	67	79	74	142
Southern	71	124	76	124	74	133	70	132	71	134	72	104	77	78	73	110
Tenn. Central	77	138	83	151	84	170	82	181	82	185	80	192	84	127	82	158
Total	73	143	74	136	76	149	73	150	74	151	72	126	77	89	74	126

Statistics for T. A. & G. not available.

SOURCE: Reports of Carriers to the Interstate Commerce Commission.

Line No. 10 Page 12 of 31 pages

(102) PASSENGER, (104) SLEEPING CAR, (105) PARLOR AND CHAIR CAR, (108) OTHER PASSENGER TRAIN REVENUE, AND (131) DINING AND BUFFET REVENUE
PER PASSENGER CARRYING CAR MILE (CENTS)
RAILROADS OPERATING IN STATE OF TENNESSEE
(PETITIONERS IN THIS PROCEEDING)

Road	1936	1937	1938	1939	1940	1941	1942	Average
Ala. Great Southern	15.26	17.16	14.78	14.35	15.97	23.86	47.33	22.61
Clinchfield	8.95	9.20	7.48	6.61	7.23	9.16	13.87	8.95
Central of Georgia	12.93	13.07	11.42	11.10	11.84	16.49	30.10	16.10
C. N. O. & T. P.	16.85	19.02	17.26	16.93	17.44	22.36	43.64	22.95
G. M. & O.	13.13	14.31	12.24	11.01	10.73	14.57	27.19	14.82
I. C. (incl. Y.&M.V.)	17.16	18.66	17.66	17.53	18.15	21.21	34.02	20.95
L. & N.	14.18	15.21	13.72	13.51	14.11	18.17	35.97	18.87
N. C. & St. L.	13.76	14.57	13.38	13.40	14.41	18.32	39.11	19.41
St. L. S. F.	14.15	14.44	13.43	13.70	13.60	18.60	37.78	18.97
Southern	16.03	16.96	15.85	15.92	16.60	22.51	45.10	22.47
T. A. & G.	11.89	22.00	18.77	17.25	18.23	19.39	32.41	18.99
Tenn. Central	9.01	8.94	7.60	7.38	8.12	7.84	20.76	10.44
Total	15.43	16.45	15.20	15.02	15.65	20.21	38.21	20.32
Total excluding T.A.&G.	15.43	16.45	15.20	15.02	15.65	20.21	38.21	20.32

SOURCE: Reports of Carriers to the I. C. C.

Line No. **11** Page 13 of 31 pages

(103) BAGGAGE, (106) MAIL, (107) EXPRESS, AND (109) MILK REVENUE PER BAGGAGE, MAIL AND EXPRESS CAR MILE (CENTS)
RAILROADS OPERATING IN STATE OF TENNESSEE
(PETITIONERS IN THIS PROCEEDING)

Road	1936	1937	1938	1939	1940	1941	1942	Average
A. G. S.	23.31	23.23	27.02	26.81	23.66	25.43	27.95	25.39
Clinchfield	27.57	29.74	34.15	38.83	37.10	38.58	42.08	34.78
Central of Ga.	23.04	20.18	10.27	18.34	17.80	18.97	20.99	18.46
C. N. O. & T. P.	26.90	27.66	25.85	25.86	26.01	25.22	26.57	26.27
G. M. & O.	26.72	24.95	25.88	26.09	24.27	26.76	32.75	26.55
I. C. (Incl. Y.&M.V.)	20.08	19.29	18.71	17.83	19.63	20.64	21.45	19.91
L. & N.	30.93	29.22	28.06	29.08	28.38	29.00	29.81	29.22
N. C. & St. L.	31.20	28.21	26.88	27.66	26.85	26.71	30.61	28.28
St. L.-S. F.	28.01	26.70	25.43	24.92	26.91	26.92	28.57	26.83
Southern	32.71	31.72	30.65	28.98	27.82	28.76	31.21	30.20
T. A. & G.	31.86	32.29	30.99	31.14	31.19	31.43	31.76	31.52
Tenn. Central	51.91	57.11	53.62	59.18	67.03	53.92	45.09	54.24
Average	26.72	25.44	24.10	24.12	24.57	25.37	27.71	25.46
Avg. excl. T.A.&G.	26.72	25.44	24.09	24.12	24.57	25.36	27.71	25.46

SOURCE: Annual reports to I. C. C.

Line No. **12** Page 14 of 31 pages

REVENUE PER PASSENGER MILE (CENTS)—COACHES (OTHER THAN COMMUTATION)
RAILROADS OPERATING IN TENNESSEE
(PETITIONERS IN THIS PROCEEDING)

Road	1937	1938	1939	1940	1941	1942	Average
A. G. S.	1.430	1.714	1.341	1.291	1.276	1.446	1.406
Clinchfield	1.580	2.018	1.511	1.480	1.483	1.653	1.608
Central of Georgia	1.468	1.756	1.364	1.344	1.421	1.577	1.494
C. N. O. & T. P.	1.489	1.804	1.347	1.288	1.363	1.638	1.509
G. M. & O.	1.546	1.683	1.547	1.548	1.620	1.978	1.673
I. C. (Inc. Y.&M.V.)	1.543	1.738	1.593	1.565	1.645	1.923	1.699
L. & N.	1.496	1.788	1.403	1.395	1.437	1.578	1.520
N. C. & St. L.	1.529	1.839	1.480	1.489	1.464	1.540	1.535
St. L.-S. F.	1.785	1.790	1.733	1.748	1.816	2.029	1.873
Southern	1.448	1.824	1.345	1.291	1.423	1.600	1.507
Tenn. Central	1.727	1.769	1.719	1.803	1.589	1.486	1.619
Average	1.524	1.774	1.477	1.446	1.515	1.697	1.594

SOURCE: Form APT rendered to I. C. C.

Statistics for T. A. & G. not available.

Line No. 13 Page 15 of 31 pages

1 REVENUE PER PASSENGER MILE (CENTS)—IN PARLOR AND SLEEPING CARS
2 RAILROADS OPERATING IN STATE OF TENNESSEE
3 (PETITIONERS IN THIS PROCEEDING)

4 Roads	1937	1938	1939	1940	1941	1942	Average
5 A. G. S.	2.346	2.423	2.461	2.383	2.151	2.149	2.233
6 Clinchfield	2.482	3.132	-----	1.011	2.468	3.292	2.504
7 Central of Georgia	2.049	2.049	2.049	2.049	2.049	2.234	2.125
8 C. N. O. & T. P.	2.368	2.439	2.471	2.444	2.436	2.691	2.515
9 G. M. & O.	1.635	1.952	1.937	2.001	2.016	2.248	2.084
10 I. C. (Inc. Y. & M. V.)	2.151	2.028	2.237	2.153	1.967	1.919	2.038
11 L. & N.	2.222	2.354	2.384	2.321	2.309	2.498	2.387
12 N. C. & St. L.	2.411	2.495	2.478	2.377	2.405	2.663	2.528
13 St. L.-S. F.	2.162	2.397	2.376	2.341	2.341	2.324	2.323
14 Southern	2.328	2.416	2.407	2.353	2.435	2.880	2.555
15 Tenn. Central	2.570	2.536	2.614	2.579	2.566	2.963	2.728
16 Total	2.246	2.311	2.358	2.300	2.285	2.483	2.366

17 Statistics for T. A. & G. not available.

SOURCE: Form APT rendered to I. C. C.

Line No. 14 Page 16 of 31 pages

1 REVENUE (OTHER THAN COMMUTATION) PER COACH MILE (CENTS)
2 RAILROADS OPERATING IN TENNESSEE
3 (PETITIONERS IN THIS PROCEEDING)

4 Roads	1937	1938	1939	1940	1941	1942	Average
5 A. G. S.	26.12	22.58	21.65	22.54	30.77	55.18	32.88
6 Clinchfield	13.62	10.99	9.77	10.72	12.09	20.33	12.68
7 Central of Georgia	22.35	18.43	18.11	19.35	24.74	39.22	25.13
8 C. N. O. & T. P.	25.20	19.91	20.18	22.76	26.34	51.85	30.50
9 G. M. & O.	23.74	20.21	19.11	18.81	21.29	34.60	23.13
10 I. C. (Inc. Y. & M. V.)	22.12	20.96	20.05	21.42	26.74	42.71	26.20
11 L. & N.	20.06	17.10	16.55	17.64	23.55	43.72	24.52
12 N. C. & St. L.	23.35	18.80	18.73	21.75	29.28	50.17	29.46
13 St. L.-S. F.	21.33	17.69	17.47	19.72	27.15	55.18	27.82
14 Southern	20.37	19.32	19.14	20.94	29.99	57.89	30.72
15 Tenn. Central	12.56	10.31	10.34	11.57	13.21	29.92	15.18
16 Average	21.35	19.15	18.59	20.09	26.66	48.36	27.16

SOURCE: Form APT rendered to I. C. C.

Line No. **15** Page 17 of 31 pages

REVENUE PER SLEEPING AND PARLOR CAR MILE (CENTS)
RAILROADS OPERATING IN STATE OF TENNESSEE
(PETITIONERS IN THIS PROCEEDING)

Road	1937	1938	1939	1940	1941	1942	Average
A. G. S.	22.21	19.63	19.41	22.99	35.84	59.70	33.37
Clinchfield	3.31	112.38	-----	11.03	55.09	82.29	51.31
Central of Georgia	13.12	13.72	12.81	13.17	19.15	37.85	19.69
C. N. O. & T. P.	24.69	25.03	24.73	24.65	32.61	65.40	33.29
G. M. & O.	5.27	5.24	54.39	4.10	8.53	22.16	9.69
I. C. (Incl. Y.&M.V.)	18.99	17.01	17.84	17.41	19.29	31.48	20.93
L. & N.	18.99	18.79	18.59	18.64	22.80	44.51	25.48
N. C. & St. L.	16.82	18.00	17.48	17.22	20.98	52.29	25.45
St. L.-S. F.	17.56	18.63	18.03	17.63	24.59	44.51	25.55
Southern	27.74	26.95	26.52	26.09	32.84	63.15	35.68
Tenn. Central	16.24	15.53	14.33	14.41	9.32	25.51	16.91
Total	20.94	20.38	20.30	20.12	25.29	47.47	27.26

Statistics for T.A.&G. not available.

SOURCE: Form APT rendered to I. C. C.

Line No. **16** Page 18 of 31 pages

TOTAL RAILWAY TAX ACCRUALS (ACCOUNT 532)
RAILROADS OPERATING IN STATE OF TENNESSEE
(PETITIONERS IN THIS PROCEEDING)

Road	1936	1937	1938	1939	1940	1941	1942	Average
Alabama Great Southern	$ 538,176	$ 673,845	$ 715,185	$ 882,224	$1,078,245	$1,628,110	$ 6,639,606	$1,735,770
Clinchfield	725,979	467,020	591,870	699,854	1,004,754	1,240,431	1,497,561	889,767
Central of Georgia	1,137,601	1,052,802	1,331,733	1,351,817	1,441,266	1,628,110	2,508,296	1,493,089
C. N. O. & T. P.	1,330,937	1,436,302	1,595,488	1,813,272	2,227,001	3,755,992	8,896,710	3,007,957
G. M. & O.	1,247,704	1,217,236	1,321,777	1,377,118	1,541,369	2,495,355	4,651,400	1,978,851
I. C. (Incl. Y.&M.V.)	9,119,756	8,048,582	9,683,876	10,132,942	10,028,949	13,444,595	26,522,731	12,425,919
L. & N.	6,626,087	7,716,721	7,114,734	8,135,700	10,304,935	18,212,127	48,370,589	15,211,556
N. C. & St. L.	541,497	877,159	921,860	934,296	1,100,371	1,855,540	5,047,943	1,611,238
St. L.-S. F.	3,538,418	3,194,565	3,749,227	3,757,097	3,771,505	4,122,271	4,839,991	3,853,296
Southern*	5,936,208	7,134,838	7,437,953	7,886,854	8,391,483	15,552,058	41,488,395	13,403,971
Tenn., Ala. & Ga.	37,770	23,769	34,159	54,477	80,723	80,424	105,664	59,569
Tenn. Central	90,560	120,190	151,089	161,291	170,240	216,472	340,323	178,595
Total	$30,870,693	$31,963,929	$34,648,951	$37,186,942	$41,135,841	$64,231,495	$150,909,209	$55,849,578
Total excl. T. A. & G.	$30,832,923	$31,940,160	$34,614,792	$37,132,465	$41,055,118	$64,151,071	$150,803,545	$55,790,009
Index	100	104	112	120	133	208	489	181

*Includes Gulf, Mobile & Northern and Mobile & Ohio.

*Includes Nor. Ala. Ry. Co.

SOURCE: Reports of the carriers to Interstate Commerce Commission.

Line No. **17** Page 19 of 31 pages

RAILWAY TAX ACCRUALS—PASSENGER

RAILROADS OPERATING IN STATE OF TENNESSEE

(PETITIONERS IN THIS PROCEEDING)

Roads	1936	1937	1938	1939	1940	1941	1942	Average
Ala. Great Southern	$ 135,290	$ 113,560	$ 127,222	$ 134,081	$ 155,484	$ 150,467	$1,039,893	$ 265,142
Clinchfield	21,979	26,314	31,575	28,272	28,250	21,862	25,419	26,239
Central of Georgia	300,554	269,260	354,989	341,469	372,884	385,211	626,302	377,810
C. N. O. & T. P.	161,241	209,746	251,383	401,248	267,335	277,263	1,186,214	393,490
Gulf, Mobile & Ohio	168,090	156,648	189,758	180,297	205,190	209,505	193,398	186,127
I. C. (Incl. Y.&M.V.)	2,283,943	1,872,773	2,336,200	2,316,764	2,314,004	2,663,516	2,820,304	2,372,501
L. & N.	1,307,787	1,498,428	1,661,076	1,561,801	1,635,869	1,716,511	5,450,546	2,118,860
N. C. & St. L.	126,872	208,238	229,635	227,632	225,600	254,765	1,087,892	337,225
St. L.-S. F.	872,928	793,849	949,304	910,720	897,241	932,870	1,082,706	919,945
Southern	1,400,676	1,840,445	1,930,708	1,810,427	1,961,963	1,926,381	8,912,325	2,826,132
Tenn. Central	7,487	13,212	17,210	18,986	19,748	19,875	24,817	17,334
Total	$6,786,847	$7,002,473	$8,079,060	$7,931,697	$8,083,568	$8,558,226	$22,443,756	$ 9,840,805
Index	100	103	119	117	119	126	331	145

SOURCE: Reports of the Carriers to the Interstate Commerce Commission.

Line No. **18** Page 20 of 31 pages

INDICES OF HOURLY COMPENSATION (CENTS)—ALL EMPLOYEES (1936=100)

(RAILROADS OPERATING IN STATE OF TENNESSEE)

(PETITIONERS IN THIS PROCEEDING)

Roads	1936	1937	1938	1939	1940	1941	1942	Average
Ala. Great Southern	100	105	113	115	115	121	138	117
Clinchfield	100	103	110	110	110	116	126	112
Central of Ga	100	102	112	111	113	120	132	113
C. N. O. & T. P.	100	103	109	110	111	116	127	112
G. M. & O.	100	109	118	116	116	124	135	114
I. C. (Inc. Y.&M.V.)	100	103	109	108	108	113	122	110
L. & N.	100	103	109	109	109	114	124	110
N. C. & St. L.	100	104	112	110	111	115	125	118
St. L.-S. F.	100	103	108	109	109	110	125	110
Southern	100	102	110	108	109	115	126	111
T. A. & G.	100	104	113	121	133	147	171	125
Tenn. Central	100	104	112	111	110	116	126	112
Total	100	107	110	109	109	116	125	111

SOURCE: Annual Reports to Interstate Commerce Commission.

Line No. **19** Page 21 of 31 pages

SOUTHERN REGION

Index of Average Unit Prices of Railway Material and Supplies, Including Fuel

October 1936—100

	Oct. 1, 1936	Jan. 1, 1937	Apr. 1, 1937	Oct. 1, 1937	Dec. 1, 1937	Jan. 1, 1938	Dec. 1, 1938	June 1, 1939	Dec. 1939	June 1940	Dec. 1940	June 1941	Dec. 1941	June 1942	Dec. 1942	June 1943
Forest Products	100	106	110	108	107	102	99	101	111	110	131	132	148	172	182	193
Iron and Steel Prod.	100	108	119	121	122	120	112	112	117	113	114	119	122	123	148	121
Miscl. Products	100	108	117	131	105	101	104	101	107	105	105	106	109	115	185	118
Total (excl. Fuel)	100	108	116	115	114	111	107	106	113	110	115	119	124	131	166	136
Fuel (Coal and Oil)	100	103	106	110	112	110	108	109	109	110	110	117	125	127	129	147
Total (incl. Fuel)	100	106	113	114	113	111	107	107	111	110	114	118	124	130	154	140

SOURCE: Records of Association of American Railroads—Bureau of Railway Economics.

Line No. **20** Page 22 of 31 pages

REVENUE PASSENGER MILES PER TRAIN MILE
RAILROADS OPERATING IN STATE OF TENNESSEE
(PETITIONERS IN THIS PROCEEDING)

Roads	1916	1917	1918	1919	1920	Average
A. G. S.	66.59	91.42	107.35	103.86	93.05	92.39
Clinchfield	34.20	43.94	57.81	48.59	50.80	47.14
Central of Georgia	43.97	54.70	67.27	68.98	64.81	59.84
C. N. O. & T. P.	58.34	86.02	111.43	82.62	85.39	84.00
G. M. & O.	37.01x	36.56	41.55	42.59	44.25	40.57
I. C. (inc. Y. & M. V.)	52.71	57.95	63.36	70.19	70.63	62.98
L. & N.	52.44	65.12	82.68	80.07	78.77	71.86
N. C. & St. L.	62.76	55 52	90.51	74.57	68.52	70.44
St. L. S. F.	58.75	69.97	80.26	88.54	85.72	76.44
Southern	49.29	66.57	91.19	76.31	68.71	70.66
T. A. & G.	11.48	11.91	11.24	13.28	14.18	12.39
Tenn. Central	31.32	33.64	95.53	41.33	42.08	49.04
Total	52.04	62.72	78.59	75.34	72.37	68.29
Total excluding T. A. & G.	52.08	62.77	78.66	75.40	72.43	68.35

xDoes not include Gulf, Mobile & Northern—not listed in Blue Book.

SOURCE: I. C. C. Statistics of Railways in the United States.

Line No. 21 Page 23 of 31 pages

REVENUE PASSENGER MILES PER TRAIN MILE
RAILROADS OPERATING IN STATE OF TENNESSEE
(PETITIONERS IN THIS PROCEEDING)

Roads	1921	1922	1923	1924	1925	1926	1927	1928	1929	1930	Average
A. G. S.	68.20	61.32	70.51	67.39	64.99	56.35	51.05	58.51	55.13	40.85	59.16
Clinchfield	43.89	41.89	47.19	38.16	32.25	28.98	25.82	18.26	16.45	10.99	30.64
Central of Georgia	46.57	42.69	45.03	42.09	45.03	43.88	34.96	30.88	29.03	23.74	38.56
C. N. O. & T. P.	68.15	70.41	82.50	71.18	69.95	62.80	58.16	55.14	50.48	36.25	62.00
G. M. & O.	31.42	30.61	31.90	29.06	27.85	26.93	23.26	19.74	18.69	14.29	25.27
I. C. (Incl. Y. & M. V.)	54.58	53.74	55.99	51.56	51.33	51.10	50.77	48.05	48.68	43.62	50.88
L. & N.	60.43	55.53	62.26	57.22	53.80	50.89	47.71	42.96	39.13	31.09	50.06
N. C. & St. L.	56.81	51.76	52.90	48.87	48.31	44.44	41.26	37.66	35.59	29.48	45.13
St. L.-S. F.	63.42	60.89	62.61	55.30	50.95	48.35	44.46	38.23	36.30	31.99	49.53
Southern	58.43	57.21	61.92	57.11	55.55	54.07	49.82	46.58	43.88	34.72	52.09
T. A. & G.	8.53	9.01	8.82	7.92	8.12	6.76	5.38	4.33	4.22	3.08	6.68
Tenn. Central	34.27	32.62	36.79	32.86	28.93	24.84	23.51	20.54	16.82	12.51	27.39
Average	56.66	54.40	58.21	53.23	51.71	49.91	46.68	42.97	41.20	34.40	48.97
Average excl. T. A. & G.	56.71	54.44	58.28	53.29	51.76	49.95	46.72	43.01	41.24	34.43	49.02

SOURCE: I. C. C. Statistics of Railways in the United States.

Line No. 22 Page 24 of 31 pages

REVENUE PASSENGER MILES PER TRAIN MILE
RAILROADS OPERATING IN STATE OF TENNESSEE
(PETITIONERS IN THIS PROCEEDING)

Roads	1931	1932	1933	1934	1935	1936	1937	1938	1939	1940	Average
A. G. S.	31.66	31.67	35.22	45.99	49.98	52.01	56.62	41.68	44.87	52.21	44.16
Clinchfield	7.71	4.19	4.87	13.33	15.63	17.82	17.31	10.96	13.09	14.64	11.82
Central of Georgia	18.17	14.10	25.71	33.63	34.53	39.88	38.58	29.46	34.86	39.32	30.16
C. N. O. & T. P.	29.73	26.10	39.90	45.30	44.40	58.99	63.31	48.16	54.72	62.39	46.89
G. M. & O.	11.62	11.75	17.18	17.33	18.28	21.66	22.82	17.76	17.73	17.17	17.53
I. C. (Incl. Y. & M. V.)	39.33	38.17	47.52	49.15	43.00	49.51	55.87	50.08	51.74	56.02	47.68
L. & N.	25.44	23.77	26.60	34.00	38.40	44.29	47.47	35.30	40.68	44.72	35.61
N. C. & St. L.	26.37	21.88	26.20	32.60	34.70	37.03	39.89	29.50	34.74	39.99	32.15
St. L.-S. F.	25.62	20.81	19.07	24.52	26.46	31.82	33.69	30.13	30.34	30.95	27.83
Southern	27.75	25.19	28.40	37.20	39.90	45.76	46.60	35.60	44.02	49.56	37.58
T. A. & G.	2.34	1.50	1.91	5.59	6.21	7.85	6.70	4.59	5.38	5.75	4.78
Tenn. Central	10.33	9.88	9.46	13.35	13.19	12.92	13.08	10.61	10.60	11.53	11.50
Average	28.85	26.47	31.09	36.97	37.44	43.24	46.08	37.50	41.67	45.71	37.19
Average excl. T. A. & G.	28.88	26.50	31.14	37.01	37.48	43.29	46.14	37.55	41.73	45.78	37.24

SOURCE: I. C. C. Statistics of Railways in the U. S.

Line No. 23 Page 25 of 31 pages

REVENUE PASSENGER MILES PER TRAIN MILE
RAILROADS OPERATING IN STATE OF TENNESSEE
(PETITIONERS IN THIS PROCEEDING)

Roads	1941	1942	Jan.-Aug. 1943
Alabama Great Southern	96.14	178.72	237.16
Clinchfield	18.07	26.09	42.68
Central of Georgia	60.27	109.51	158.22
Cincinnati, New Orleans & Texas Pacific	81.05	145.89	167.73
Gulf, Mobile & Ohio	20.63	42.80	76.79
Illinois Central (Incl. Y.&M.V.)	66.90	105.12	193.31
Louisville & Nashville	60.45	121.76	214.48
Nashville, Chattanooga & St. Louis	56.82	129.01	198.07
St. Louis-San Francisco	44.93	106.01	161.49
Southern	70.43	145.01	200.25
T. A. & G.	12.30	17.97	*
Tennessee Central	12.56	40.90	90.47
Total	61.77	119.86	189.11
Total exclusive T. A. & G.	61.81	119.94	189.11

*Not available.

SOURCE: Form OSD rendered to Interstate Commerce Commission.

Line No. 24 Page 26 of 31 pages

REVENUE PASSENGER MILES PER CAR MILE
RAILROADS OPERATING IN STATE OF TENNESSEE
(PETITIONERS IN THIS PROCEEDING)

Roads	1916	1917	1918	1919	1920	Average
A. G. S.	14.82	19.00	23.67	23.30	21.85	20.51
Clinchfield	10.73	18.84	23.09	19.57	25.97	20.16
Central of Georgia	13.36	15.84	19.47	19.21	17.49	17.10
C. N. O. & T. P.	14.02	17.95	23.57	17.62	18.10	18.22
G. M. & O.	13.40*	16.66	15.91	16.50	16.87	15.93
I. C. (Inc. Y. & M. V.)	14.07	15.55	17.81	18.91	18.45	16.95
L. & N.	14.19	16.84	20.82	20.59	19.83	18.52
N. C. & St. L.	12.91	14.98	22.36	19.60	17.37	17.47
St. L.-S. F.	16.68	18.59	20.66	22.18	21.17	19.93
Southern	14.48	17.37	21.33	18.48	17.23	17.98
T. A. & G.	5.32	5.71	5.58	6.75	7.09	6.06
Tenn. Central	12.99	13.89	28.40	15.51	17.13	18.39
Total	14.46	16.85	20.31	19.52	18.66	18.03
Total excluding T. A. & G.	14.47	16.85	20.32	19.53	18.67	18.04

*Does not include Gulf, Mobile & Northern—not listed in Blue Book.

SOURCE: I. C. C. Statistics of Railway in the U. S.

Line No. 25 Page 27 of 31 pages

REVENUE PASSENGER MILES PER CAR MILE
RAILROADS OPERATING IN STATE OF TENNESSEE
(PETITIONERS IN THIS PROCEEDING)

Roads	1921	1922	1923	1924	1925	1926	1927	1928	1929	1930	Average
A. G. S.	15.72	15.03	16.55	15.52	14.22	12.28	10.96	10.31	11.41	8.84	13.12
Clinchfield	19.52	18.48	17.20	13.92	11.89	10.75	9.34	6.87	6.14	4.10	11.71
Central of Georgia	13.11	12.05	12.36	11.07	11.09	10.68	9.14	8.67	7.68	6.40	10.24
C. N. O. & T. P.	12.88	13.78	15.53	13.61	12.32	10.91	10.04	9.72	9.11	6.91	11.31
G. M. & O.	12.19	12.09	12.43	10.98	10.45	9.70	8.72	7.68	7.74	5.98	9.80
I. C. (Incl. Y. & M. V.)	14.74	14.41	14.70	13.38	13.05	12.67	13.12	12.51	12.55	11.50	13.23
L. & N.	15.69	14.28	15.41	14.07	12.76	11.86	11.30	10.33	9.34	7.48	12.17
N. C. & St. L.	14.29	13.25	13.37	12.56	12.16	11.38	10.98	9.94	8.69	7.72	11.48
St. L.-S. F.	16.78	16.25	16.56	14.02	12.91	12.28	11.58	10.06	9.59	8.56	12.92
Southern	14.41	14.61	14.96	13.57	12.98	12.36	11.60	10.94	10.24	8.20	12.38
T. A. & G.	4.26	5.21	7.18	7.56	8.11	6.76	5.38	4.33	4.22	3.06	5.65
Tenn. Central	14.29	13.55	15.14	13.57	12.75	11.49	10.73	9.46	8.28	6.18	12.07
Total	14.89	14.43	14.95	13.45	12.72	12.06	11.61	10.85	10.32	8.75	12.38
Total excl. T. A. & G.	14.90	14.43	14.96	13.45	12.72	12.06	11.61	10.86	10.32	8.75	12.38

SOURCE: I. C. C. Statistics of Railways in the United States.

Line No. 26 Page 28 of 31 pages

REVENUE PASSENGER MILES PER CAR MILE
RAILROADS OPERATING IN STATE OF TENNESSEE
(PETITIONERS IN THIS PROCEEDING)

Roads	1931	1932	1933	1934	1935	1936	1937	1938	1939	1940	Average
A. G. S.	7.05	6.88	7.71	9.42	10.07	10.24	11.24	8.47	9.43	11.04	9.21
Clinchfield	3.79	2.09	2.57	7.53	7.77	8.84	8.58	5.47	6.47	7.25	5.97
Cent. of Ga.	5.15	3.77	6.48	8.08	8.41	10.50	10.06	7.80	9.00	9.66	7.80
C. N. O. & T. P.	5.81	5.31	8.10	8.50	8.85	10.51	11.23	8.89	10.19	11.05	8.85
G. M. & O.	5.01	6.11	7.60	7.30	7.86	11.63	11.77	8.90	8.67	8.34	8.10
I. C. (Inc. Y. & M. V.)	10.74	10.38	12.31	12.46	11.35	12.08	13.27	12.09	12.32	12.89	12.00
L. & N.	6.15	5.92	6.70	8.34	9.12	10.07	10.39	8.09	9.18	9.65	8.34
N. C. & St. L.	6.35	5.87	6.61	7.98	8.58	9.79	10.07	7.88	8.91	9.78	8.15
St. L.-S. F.	6.35	6.3	5.72	6.95	7.50	8.45	8.55	7.40	7.42	7.85	7.35
Southern	6.69	6.22	7.10	8.10	9.39	11.18	11.07	8.91	10.34	11.10	9.04
T. A. & G.	4.69	3.00	3.82	11.18	12.39	15.69	13.39	9.17	10.76	11.50	9.55
Tenn. Central	5.14	5.86	5.43	7.24	7.10	6.77	7.03	5.91	5.87	6.17	6.25
Total	7.48	7.04	8.17	9.40	9.51	10.78	11.15	9.31	10.09	10.71	9.35
Total excluding T. A. & G.	7.48	7.04	8.17	9.40	9.51	10.78	11.15	9.31	10.09	10.71	9.35

SOURCE: I. C. C. Statistics of Railways in the United States.

Line No. **27** Page 29 of 31 pages

REVENUE PASSENGER MILES PER CAR MILE
RAILROADS OPERATING IN STATE OF TENNESSEE
(PETITIONERS IN THIS PROCEEDING)

Line No.	Roads	1941	1942	Jan.-Aug. 1943
5	Alabama Great Southern	16.82	27.26	34.34
6	Clinchfield	86.16	12.37	18.22
7	Central of Georgia	13.65	20.78	27.00
8	C. N. O & T. P.	15.74	27.56	29.83
9	G. M. & O.	10.07	15.35	21.07
10	I. C. (Incl. Y. & M. V.)	14.72	20.39	29.95
11	L. & N.	12.30	21.11	33.83
12	N. C. & St. L.	13.43	25.16	34.86
13	St. L.-S. F.	10.68	20.26	26.45
14	Southern	14.25	25.25	31.89
15	T. A. & G.	12.30	17.97	*
16	Tennessee Central	6.27	15.14	24.04
17	Total	13.52	22.31	30.84
18	Total excl. T. A. & G.	13.52	22.31	30.84

*Not available.

SOURCE: Form OS-D rendered to Interstate Commerce Commission.

Line No. **28** Page 30 of 31 pages

PASSENGER MILES PER COACH MILE
RAILROADS OPERATING IN STATE OF TENNESSEE
(PETITIONERS IN THIS PROCEEDING)

Line No.	Roads	1937	1938	1939	1940	1941	1942	Average
5	A. G. S.	18.26	13.17	16.15	17.46	24.12	38.15	23.39
6	Clinchfield	8.62	5.44	6.47	7.25	8.16	12.29	8.07
7	Central of Georgia	15.22	10.49	13.28	14.40	17.41	24.87	16.82
8	C. N. O. & T. P.	16.93	11.03	14.99	17.67	19.33	31.65	20.22
9	G. M. & O.	15.35	12.01	12.35	12.15	13.14	17.49	13.83
10	I. C. (Inc. Y. & M. V.)	14.33	12.06	12.39	13.69	16.25	22.21	15.42
11	L. & N.	13.41	9.56	11.79	12.64	16.39	27.71	16.13
12	N. C. & St. L.	15.27	10.22	12.66	14.60	19.99	32.59	19.19
13	St. L.-S. F.	11.95	9.88	10.08	11.28	14.95	27.19	14.85
14	Southern	14.08	10.59	14.23	16.23	21.07	36.19	20.38
15	Tenn. Central	7.27	5.83	6.01	6.42	8.31	20.14	9.38
16	Total	14.01	10.80	12.59	13.89	17.60	28.51	17.04

SOURCE: Form APT rendered to I. C. C.

PASSENGER MILES PER SLEEPING AND PARLOR CAR MILE

RAILROADS OPERATING IN STATE OF TENNESSEE

(PETITIONERS IN THIS PROCEEDING)

Roads	1937	1938	1939	1940	1941	1942	Average
Alabama Great Southern	9.47	8.10	7.88	9.65	16.65	27.78	14.94
Clinchfield	1.33	35.88	....	10.91	22.32	25.00	20.49
Central of Georgia	6.40	6.70	6.25	6.43	9.35	16.94	9.27
C. N. O. & T. P.	10.43	10.26	10.00	10.09	13.39	24.30	13.24
Gulf, Mobile & Ohio	3.22	2.68	2.81	2.05	4.22	9.86	4.65
I. C. (Incl. Y. & M. V.)	8.83	8.39	7.98	8.08	9.81	16.41	10.27
L. & N.	8.55	7.98	7.80	8.03	9.87	17.82	10.68
N. C. & St. L.	6.98	7.22	7.05	7.24	8.72	19.63	10.07
St. Louis-San Francisco	8.12	7.78	7.59	7.53	10.51	19.15	11.00
Southern	11.92	11.16	11.02	11.09	13.49	21.93	13.96
Tenn. Central	6.32	6.12	5.48	5.59	3.63	8.62	6.20
Total	9.32	8.82	8.61	8.75	11.07	19.12	11.53

SOURCE: APT Reports rendered to I. C. C.

Tennessee Passenger Fares
I. C. C. Docket No. 29037
Exhibit No. 7
Witness: Aiken

SOUTHERN RAILWAY SYSTEM

Examples of possible reductions of INTERSTATE fares for tickets good for transportation in coaches only by purchasing to the point nearest the State Line at which trains are regularly scheduled to stop and rebuying therefrom to INTERSTATE destinations.

Item			
1. Chattanooga, Tenn. to Cincinnati, Ohio	(2.2¢)		$7.55
Chattanooga, Tenn. to Oneida, Tenn.	(1.65¢)	$2.15	
Oneida, Tenn. to Cincinnati, Ohio	(2.2¢)	4.77	6.92
Saving			0.63
2. Chattanooga, Tenn. to Washington, D. C.	(2.2¢)		13.68
Chattanooga, Tenn. to Bristol, Tenn.	(1.65¢)	4.00	
Bristol, Tenn. to Washington, D. C.	(2.2¢)	8.32	12.32
Saving			1.36
3. Chattanooga, Tenn. to Lynchburg, Va.	(2.2¢)		10.96
Chattanooga, Tenn. to Bristol, Tenn.	(1.65¢)	4.00	
Bristol, Tenn. to Lynchburg, Va.	(2.2¢)	4.51	8.51
Saving			2.45
4. Knoxville, Tenn. to Memphis, Tenn.	(2.2¢)		9.39
Knoxville, Tenn. to Chattanooga, Tenn.	(1.65¢)	1.85	
Chattanooga, Tenn. to Pocahontas, Tenn.	(2.2¢)	5.32	
Pocahontas, Tenn. to Memphis, Tenn.	(1.65¢)	1.25	8.42
Saving			0.97
5. Knoxville, Tenn. to Washington, D. C.	(2.2¢)		11.22
Knoxville, Tenn. to Bristol, Tenn.	(1.65¢)	2.20	
Bristol, Tenn. to Washington, D. C.	(2.2¢)	8.32	10.52
Saving			0.70
6. Knoxville, Tenn. to Richmond, Va.	(2.2¢)		10.52
Knoxville, Tenn. to Bristol, Tenn.	(1.65¢)	2.20	
Bristol, Tenn. to Richmond, Va.	(2.2¢)	7.63	9.83
Saving			0.69

SOUTHERN RAILWAY SYSTEM

Examples of possible reductions of INTERSTATE fares for tickets good for transportation in coaches only by purchasing to the point nearest the State Line at which trains are regularly scheduled to stop and rebuying therefrom to INTERSTATE destinations.

Item			
7. Johnson City, Tenn. to Birmingham, Ala.	(2.2¢)		7.99
Johnson City, Tenn. to Chattanooga, Tenn.	(1.65¢)	3.65	
Chattanooga, Tenn. to Birmingham, Ala.	(2.2¢)	3.19	6.84
Saving			1.15

8. Johnson City, Tenn. to New Orleans, La.	(2.2¢)		$15.84
Johnson City, Tenn. to Chattanooga, Tenn.	(1.65¢)	$3.65	
Chattanooga, Tenn. to New Orleans, La.	(2.2¢)	11.04	14.69
Saving			1.15
9. Johnson City, Tenn. to Memphis, Tenn.	(2.2¢)		11.73
Johnson City, Tenn. to Chattanooga, Tenn.	(1.65¢)	3.65	
Chattanooga, Tenn. to Pocahontas, Tenn.	(2.2¢)	5.32	
Pocahontas, Tenn. to Memphis, Tenn.	(1.65¢)	1.25	10.22
Saving			1.51
10. Memphis, Tenn. to Chattanooga, Tenn.	(2.2¢)		6.93
Memphis, Tenn. to Pocahontas, Tenn.	(1.65¢)	1.25	
Pocahontas, Tenn. to Chattanooga, Tenn.	(2.2¢)	5.32	6.57
Saving			0.36
11. Athens, Tenn. to Washington, D. C.	(2.2¢)		12.43
Athens, Tenn. to Bristol, Tenn.	(1.65¢)	3.15	
Bristol, Tenn. to Washington, D. C.	(2.2¢)	8.32	11.47
Saving			0.96
12. Athens, Tenn. to Lynchburg, Va.	(2.2¢)		8.62
Athens, Tenn. to Bristol, Tenn.	(1.65¢)	3.15	
Bristol, Tenn. to Lynchburg, Va.	(2.2¢)	4.51	7.66
Saving			0.96

Tennessee Passenger Fares
I. C. C. Docket No. 29037
Exhibit No. 8
Witness: Aiken

SOUTHERN RAILWAY SYSTEM

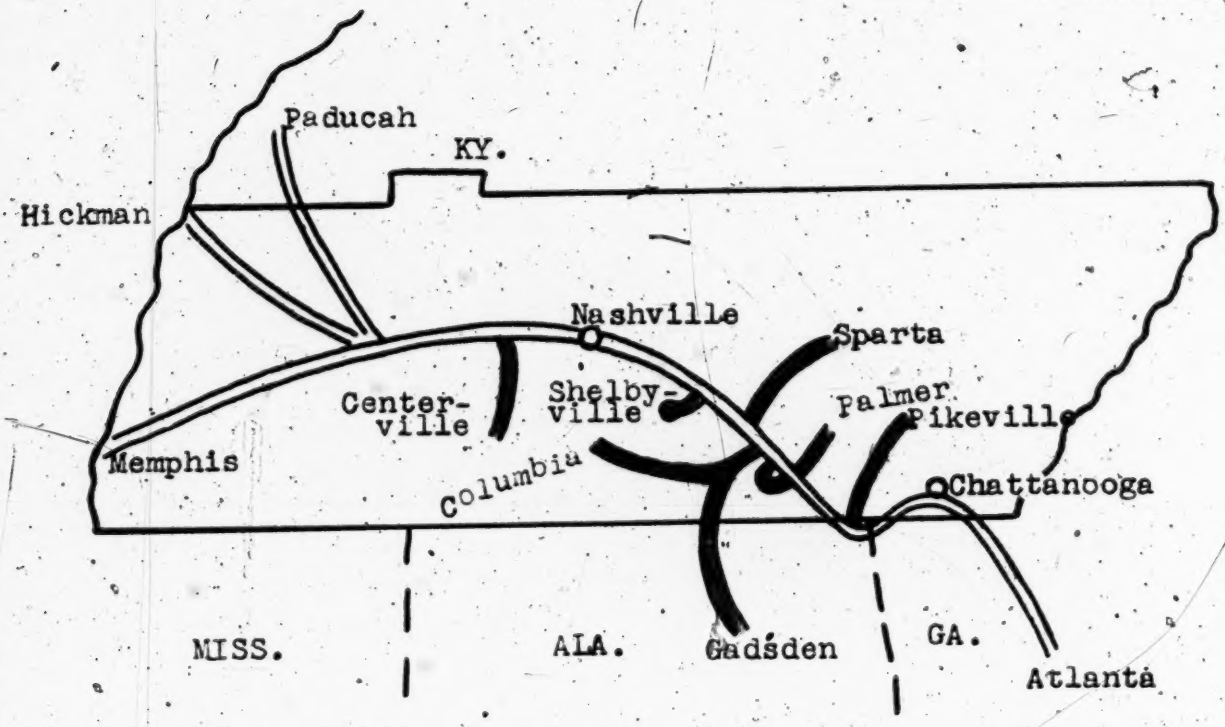
Examples showing the fares paid for transportation good in coaches only by INTERSTATE passengers, also paid by INTRASTATE passengers traveling equal distance between points in Tennessee.

Item		Distance Miles	One-Way Coach Fare	Difference in Cost in Favor Intrastate Passenger
1. Chattanooga, Tenn. to Macon, Ga.	(2.2¢)	240	$4.95	
Chattanooga, Tenn. to Bristol, Tenn.	(1.65¢)	242	4.00	$0.95
2. Chattanooga, Tenn. to Corinth, Miss.	(2.2¢)	220	4.88	
Chattanooga, Tenn. to Johnson City, Tenn.	(1.65¢)	217	3.65	1.23
3. Chattanooga, Tenn. to Nicholasville, Ky.	(2.2¢)	245	5.39	
Chattanooga, Tenn. to Bristol, Tenn.	(1.65¢)	242	4.00	1.39
4. Knoxville, Tenn. to Hickory, N. C.	(2.2¢)	213	4.[illegible]	
Knoxville, Tenn. to Nashville, Tenn.	(1.65¢)	217	3.65	1.12
5. Morristown, Tenn. to Spartanburg, S. C.	(2.2¢)	157	3.48	
Morristown, Tenn. to Chattanooga, Tenn.	(1.65¢)	153	2.65	0.83
6. Morristown, Tenn. to Columbia, S. C.	(2.2¢)	252	5.57	
Morristown, Tenn. to Nashville, Tenn.	(1.65¢)	260	4.35	1.22
7. Johnson City, Tenn. to Winston-Salem, N. C.	(2.2¢)	322	6.56	
Johnson City, Tenn. to Nashville, Tenn.	(1.65¢)	323	5.45	1.11
8. Ooltewah, Tenn. to Atlanta, Ga.	(2.2¢)	137	2.75	
Ooltewah, Tenn. to Oneida, Tenn.	(1.65¢)	144	2.40	0.35
9. Athens, Tenn. to Decatur, Ala.	(2.2¢)	178	3.96	
Athens, Tenn. to Bluff City, Tenn.	(1.65¢)	175	2.95	1.01
10. Harriman, Tenn. to Asheville, N. C.	(2.2¢)	180	4.03	
Harriman, Tenn. to Bristol, Tenn.	(1.65¢)	182	3.10	0.93
11. Oakdale, Tenn. to Asheville, N. C.	(2.2¢)	184	4.14	
Oakdale, Tenn. to Bristol, Tenn.	(1.65¢)	186	3.20	0.94
12. Johnson City, Tenn. to Roanoke, Va.	(2.2¢)	157	3.89	
Johnson City, Tenn. to Athens, Tenn.	(1.65¢)	161	2.70	1.19

Exhibit No. 9
I. C. C. Docket No. 29037
Witness Coke

MAP OF N. C. & ST. L. RAILWAY

Showing Branches in RED where passengers are handled in Freight Trains.



AUTHORITY: N. C. & St. L. Ry. Official Time Table.

Exhibit No. 10, Page No. ...
I. C. C. Docket No. 29037
Witness Coke

COMPARISON

Main Track Mileage The N. C. & St. L. Ry., Showing percent of mileage in Tennessee where passenger service consists of a coach hooked on to the rear of a freight train in lieu of a caboose

Division or Branch	Miles Served By Passenger Train	Miles Served By Freight Train
Nashville	160.99	------
Centerville	------	50.40
Chattanooga	124.87	------
Shelbyville	------	8.44
Tracy City	------	39.08
Pikeville	------	54.78
McMinnville	------	60.94
Columbia	------	85.94
Huntsville	------	2.58
Atlanta	15.43	------
P. & M.	180.63	------
Total	481.92	302.16
Percent	61.46	38.54

AUTHORITY: 1942 Annual Report of President to Stockholders.

I. C. C. Docket No. 29037
Exhibit No. 11

(32 Pages)

BEFORE

THE INTERSTATE COMMERCE COMMISSION

Docket No. 29037

WITNESS—J. O. HENDLEY

Nashville, Tenn.

Dec. 2, 1943.

Exhibit No. 11, Page No. 1
I. C. C. Docket No. 29037
Witness Hendley

COMPARISON OF PASSENGER REVENUES

Calendar Years 1941-1942—9 months of 1943

	1941	1942	Percent 1942 over 1941	9 months 1943	Percent 9 months of 1943 over full year 1941	1942
C. N. O. & T. P. Ry.	$ 1,859,009	$ 4,206,668	126.29	$ 4,821,470	159.35	14.6
Southern Ry.	14,232,779	36,265,338	154.8	42,803,925	200.74	18.03
L. & N. R. R.	8,976,429	23,288,244	159.44	34,038,264	279.20	46.16
Ill. Cent. R. R.	11,491,056	19,941,145	73.54	24,832,628	116.10	24.53
G. M. & O. R. R.	619,770	1,361,108	119.62	2,066,773	233.47	51.84
Tenn. Cent. Ry.	55,939	187,386	234.98	459,756	721.89	145.35
Clinchfield R. R.	58,032	87,422	50.64	129,393	122.97	48.01
N. C. & St. L. Ry.	1,706,194	4,654,317	172.79	6,447,849	277.91	38.53
	$ 38,999,208	$ 89,991,628	130.75	$115,600,058	196.42	28.46

AUTHORITY: Monthly Report of Revenues and Expenses filed with I. C. C.

Exhibit No. 11, Page No. 2
I. C. C. Docket No. 29037
Witness Hendley

COMPARISON OF PASSENGER REVENUES

for 9 Months

Showing percentage increase 1943 over 1941-42

Road	9 Months 1941	9 Months 1942	9 Months 1943	% 1943 over 1941	1942
C. N. O. & T. P. Ry.	$ 1,366,541	$ 2,634,305	$ 4,821,470	252.80	83.03
Southern Ry.	10,095,242	23,935,474	42,803,925	324.00	78.83
L. & N. R. R.	6,371,288	15,554,292	34,038,264	434.24	118.84
Ill. Cent. R. R.	8,321,232	13,613,803	24,832,628	198.42	82.41
G. M. & O. R. R.	441,507	859,796	2,066,773	368.12	140.38
Tenn. Cent.	39,752	103,174	459,756	1056.56	345.61
Clinchfield R. R.	45,560	56,891	129,393	184.01	127.44
N. C. & St. L. Ry.	1,225,467	2,848,842	6,447,849	426.15	126.33
	$ 27,906,589	$ 59,606,377	$115,600,058	314.24	93.94

AUTHORITY: Monthly Report of Revenues and Expenses filed with I. C. C.

Exhibit No. 11, Page 3
I. C. C. Docket No. 29037
Witness Hendley

COMPARISON

Number of passengers in cars and Number of cars in trains

Road	Average number of passenger cars in each passenger train			Average number of passengers in each passenger car		
	1941	1942	% 1942 over 1941	1941	1942	% 1942 over 1941
C. N. O. & T. P. Ry.	5.15	5.29	2.72	13.65	27.56	101.90
Southern Ry.	4.30	5.16	20.00	16.10	27.58	71.30
L. & N. R. R.	7.61	8.46	11.17	13.04	22.26	70.71
#Ill. Cent. System	7.43	8.02	7.94	14.65	20.57	40.41
Tenn. Cent. Ry.	1.99	2.70	35.68	6.30	15.14	140.32
†N. C. & St. L. Ry.	7.74	8.48	9.56	11.95	22.31	86.69
G. M. & O.	Not available					
Clinchfield						

#Average passenger per car mile.
Average cars per passenger train mile.
†Number of revenue cars per passenger train mile.
Number of revenue passengers per passenger carrying car-mile.
AUTHORITY: 1942 Annual report to the stockholders.

Exhibit No. 11, Page No. 4
I. C. C. Docket No. 29037
Witness Hendley

COMPARISON OF PER CAR EARNINGS

Road	Year	†Average Number of Passengers per passenger carrying car	Average Revenue per passenger per mile in cents	Average Revenue per passenger car mile in cents	Percent of increase 1942 over 1941
C. N. O. & T. P. Ry.	1941	13.65	1.80	24.57	
C. N. O. & T. P. Ry.	#1942	27.56	1.65	45.47	85.06
Southern Ry.	1941	16.10	1.807	29.09	
Southern Ry.	#1942	27.58	1.65	45.51	56.45
L. & N. R. R.	1941	13.04	1.707	22.26	
L. & N. R. R.	#1942	22.26	1.65	36.73	65.00
Ill. Central R. R.	1941	14.65	1.604	23.50	
Ill. Central R. R.	#1942	20.57	1.65	33.94	44.43
Tenn. Central Ry.	1941	6.30	1.831	11.54	
Tenn. Central Ry.	#1942	15.14	1.65	24.98	116.46
N. C. & St. L. Ry.	1941	11.95	1.75	20.91	
N. C. & St. L. Ry.	#1942	22.31	1.65	36.81	76.04

#For year 1942 I have used the actual average number of passengers per passenger carrying car and applied the present maximum intrastate coach passenger fare applicable in Tennessee or 1.65¢ per mile.
†Includes all passengers in sleeping, parlor, and observation cars, and coaches.
AUTHORITY: President's Annual Report to Stockholders.

Exhibit No. 11, Page No. 5
I. C. C. Docket No. 29037
Witness Hendley

COMPARISON OF PER PASSENGER CAR EARNINGS

♯Southern Region for Eight Months

Year	Average number of passengers per passenger carrying car	†Average Revenue per passenger for mile in cents	Average Revenue per passenger car mile	Percent of Increase
1942	22.9	2.01¢	46.03¢	
1943	33.1	x1.65	54.62	18.66

♯Per Car earnings for individual lines not available to public.

†Commutation fares excluded.

xPresent Intrastate fare in Tennessee.

AUTHORITY: I. C. C. Statement M-220 (S-D).

Exhibit No. 11, Page No. 6
I. C. C. Docket No. 29037
Witness Hendley

PASSENGER STATISTICS OF CLASS I STEAM RAILROADS

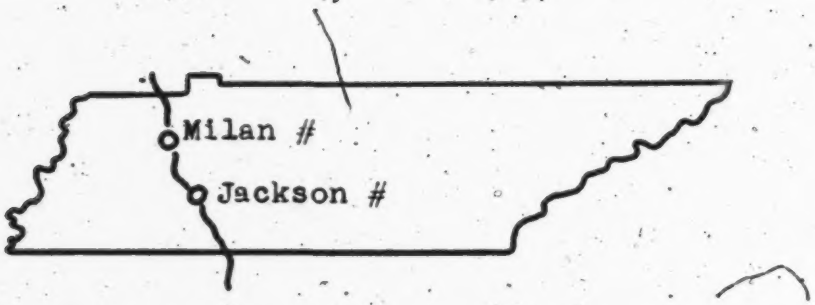
Region		Revenue Passenger-Mile per Car-Mile 1942	1943	Percent of Increase
United States	8 months	21.7	31.1	43.3
Southern	8 months	22.9	33.1	44.5
United States	August	26.4	34.4	30.3
Southern	August	28.4	36.2	27.5

AUTHORITY: I. C. C. Statement No. M-220 (OS-D).

Region		Number of Revenue Passengers carried in coaches 1942	1943	Percent of Increase
United States	7 months	165,861,393	288,851,520	74.2
Southern	7 months	15,764,870	31,759,589	101.5
United States	July	32,636,798	53,533,834	64.0
Southern	July	3,165,587	5,378,819	69.9

AUTHORITY: I. C. C. Statement No. M-250.

Exhibit No. 11, Page No. 7
I. C. C. Docket No. 29037
Witness Hendley



ROUTE OF THE "CITY OF MIAMI" THROUGH TENNESSEE

(Illinois Central)

It operates through Tennessee over the Illinois Central Railroad.

#Stops only on signal at Milan and Jackson to receive or discharge **Inter**state passengers. Does not stop for **Intra**state passengers in Tennessee.

EQUIPMENT: Diesel Powered Coach Streamliner:

De Luxe reclining reserved seat coaches. Completely air-conditioned—radio—stewardess—registered nurse—exclusive coach for women and children—Tavern Lounge Observation Car—Dining Car Service—inexpensive meals, breakfast 65¢, luncheon, 75¢, dinner 90¢, also a la carte Service.

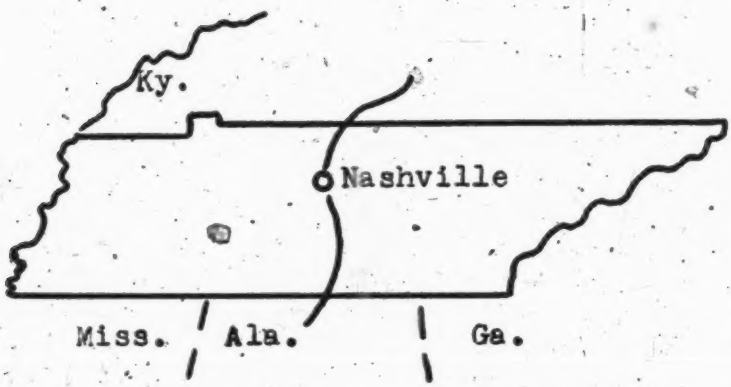
No extra charge.

Speed per hour 51 miles.

Handles intrastate passengers in Georgia and Florida. **Does not** handle intrastate passengers in Tennessee.

AUTHORITY: Official Guide of Railways.

Exhibit No. 11, Page No. 8
I. C. C. Docket No. 29037
Witness Hendley



ROUTE OF THE "SOUTH WIND" THROUGH MIDDLE TENNESSEE

(L. & N.)

The "South Wind" operates over the Louisville and Nashville Railroad between Louisville, Ky., and Montgomery, Alabama.

Streamlined, all coach train, between Chicago and Miami.

Equipment: Coaches, individual reclining chairs. All seats must be numbered and must be reserved in advance. No extra charge. All coaches including Dining Car and Broiler Buffet car service are Pennsylvania R. R. equipment and service. Low priced meals.

All air-conditioned cars.

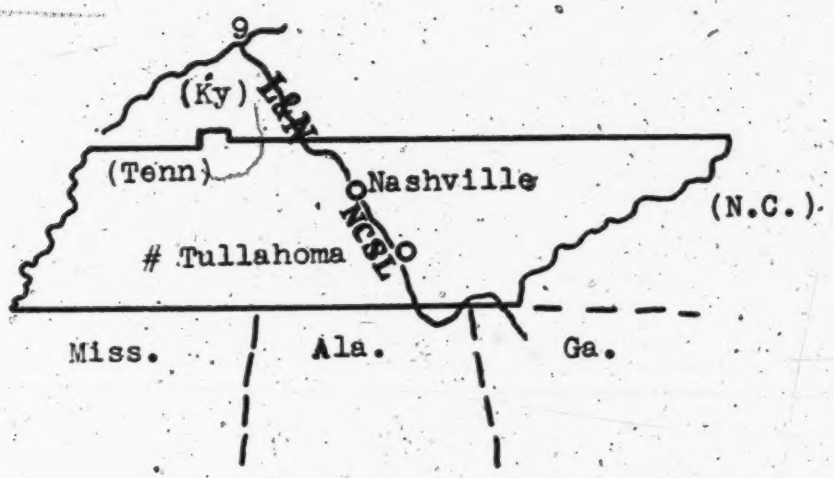
Speed: 51.22 miles per hour.

It handles intrastate passengers in Alabama, Florida, and Georgia.

It does not handle intrastate passengers in Tennessee.

AUTHORITY: Official Guide of Railways.

Evansville, Ind.



ROUTE OF THE DIXIE FLAGLER THROUGH TENNESSEE

(L. & N.) **(N. C. & ST. L.)**

#Stops for revenue passengers to or from Evansville, Ind., Louisville and beyond, also for revenue passengers to or from Atlanta and beyond.

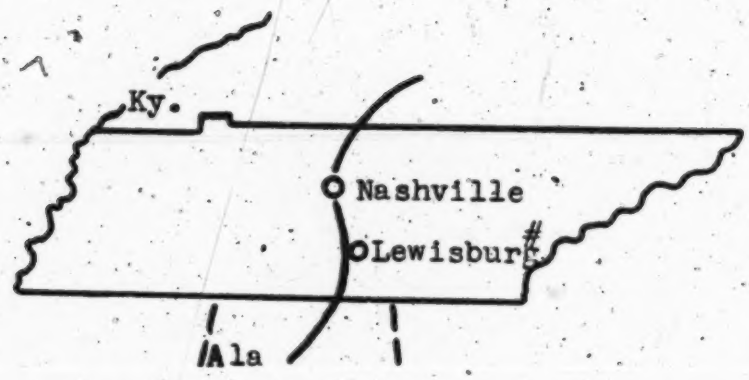
This train is a coach streamliner, air-conditioned, individual reclining seats, Tavern Car and Dining Car. All seats numbered and must be reserved in advance.

Regular coach fares apply, no extra charge.

This train operates between Chicago and Miami.

It handles intrastate passengers in Illinois, Indiana, Georgia and Florida. It handles no intrastate passengers in Tennessee.

AUTHORITY: Official Guide of Railways.



ROUTE OF THE PAN AMERICAN THROUGH MIDDLE TENNESSEE

#Stops for pay passengers to or from Birmingham or Bowling Green and beyond.

The Pan American operates over the L. & N. R. R. between Cincinnati and New Orleans.

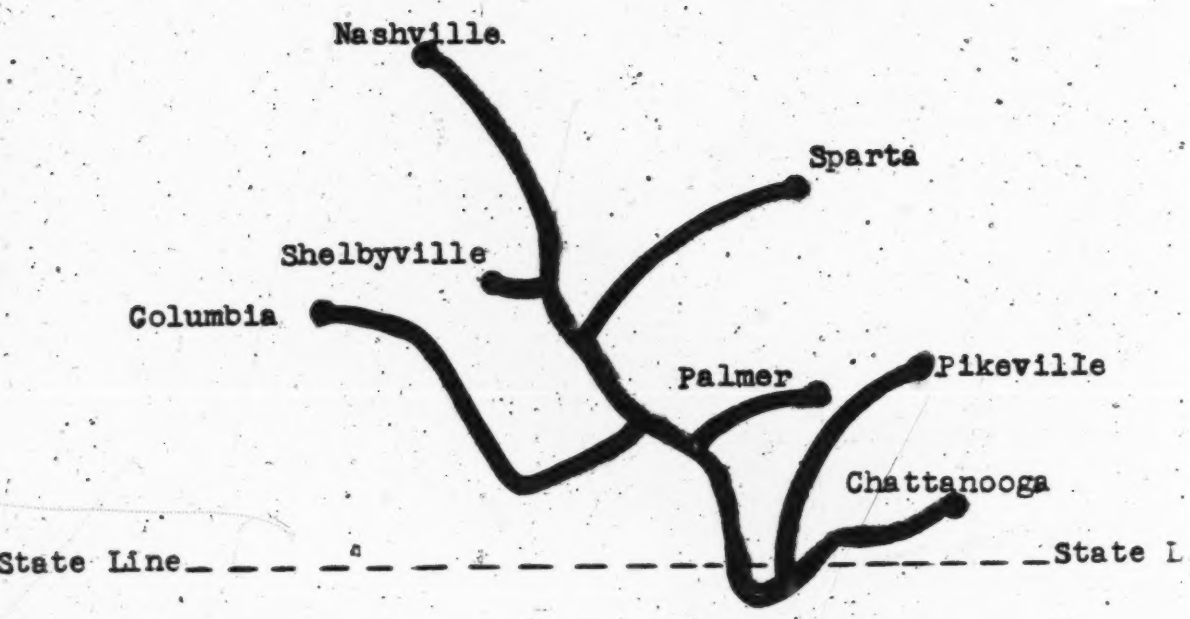
Equipment: Pullman with sections, Drawing Rooms and double bed rooms. Dining car, air-conditioned coaches with individual reclining chairs at no extra cost.

The Pan American carries intrastate passengers in Kentucky, Alabama and Mississippi. It does not carry intrastate passengers in Tennessee.

It will stop at Lewisburg to let off interstate passengers, but will not stop at Lewisburg to let off intrastate passengers.

AUTHORITY: Official Guide of Railways.

Exhibit No. 11, Page No. 11
I. C. C. Docket No. 29037
Witness Hendley



BLUE LINE: Route of Dixie Flagler. Strictly interstate in Tennessee. No intrastate passengers.

No. Miles—151..

Average speed per hour—44.6 miles.

No. of stations in Tennessee where no stop is made—17.

RED LINE: Represents Branch Lines on 1 Division where mixed trains are provided.

	No. Miles	No. Stations	Average Miles Per Hour (if on time)
Sparta Branch	60.5	12	15.0
Palmer Branch	37.6	11	14.0
Pikeville Branch	56.8	15	19.0
Shelbyville Branch	8.2	1	20.0
Columbia Branch	86.3	21	11.4
Total	249.4	60	

AUTHORITY: Official Guide.

Centerville	52.1	26	14.2

STATEMENT SHOWING

Mileage of

THE NASHVILLE, CHATTANOOGA & ST. LOUIS RY.

Over which a mixed Freight and Passenger Train only is operated

Branch	No. of Miles
Columbia	86.3
Huntsville	27.0
Guntersville	35.3
Pikeville	56.8
Palmer	37.6
Sparta	60.5
Shelbyville	8.2
Centerville	52.1
Total	363.8

Percent of total mileage—33.38%.

AUTHORITY: Official Time Table.

Exhibit No. 11, Page No. 13
I. C. C. Docket No. 29037
Witness Hendley

NOVEMBER 15, 1943

N.C.&ST.L.

TO AND FROM
Dixieland

The
NASHVILLE
CHATTANOOGA
AND ST. LOUIS
RAILWAY

Time
Tables

NOVEMBER 15, 1943

N.C.&ST.L.

TO AND FROM
Dixieland

The
NASHVILLE
CHATTANOOGA
AND ST. LOUIS
RAILWAY

Time
Tables

FLORIDA SERVICE

THE DIXIE FLAGLER

(COACH STREAMLINER)

DIXIE FLYER — DIXIE LIMITED

BETWEEN

CHICAGO—ST. LOUIS and FLORIDA

The Scenic-Historic DIXIE ROUTE

DINING CAR SERVICE FAMED FOR SOUTHERN COOKING

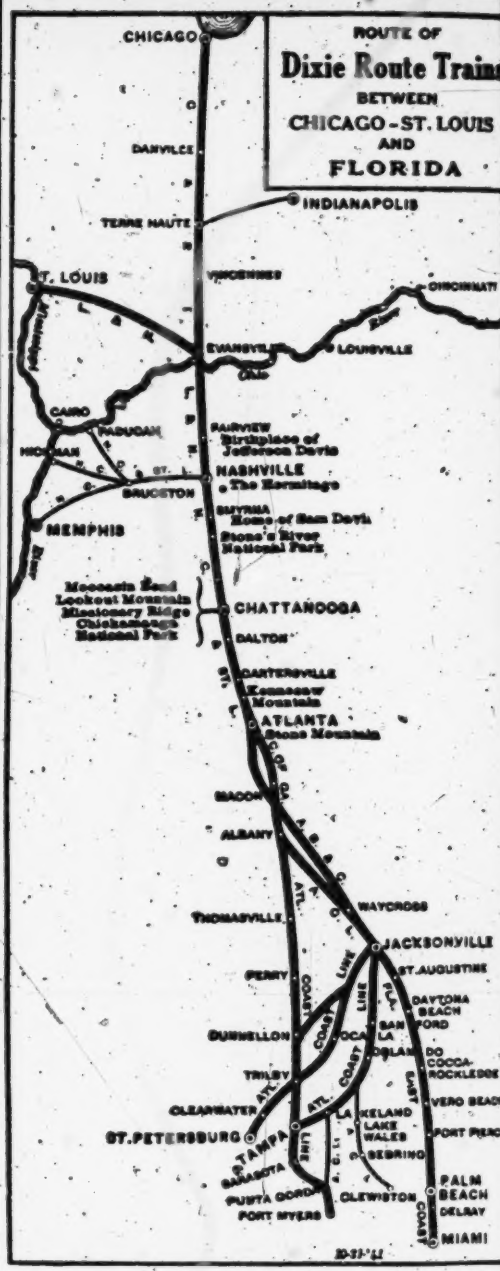
	†The Dixie Flagler Every 3rd day	Dixie Limited Daily	Dixie Flyer Daily	TABLE 18	Dixie Flyer Daily	Dixie Limited Daily	†The Dixie Flagler Every 3rd day	
	8 00AM	2 00PM	p10 00PM	Lv Chicago (Dearborn Sta.) (C.T.)				
				(C.&E.I.) Ar	7 00AM	2 40PM	10 55PM	
	10 05AM	4 05PM	12 43AM	Lv Danville " Ar	4 11AM	11 47AM	8 46PM	
	d1 05AM	6 55PM	2 04AM	Lv Terre Haute " Ar	2 40AM	10 27AM	7 45PM	
	1 13PM	8 10PM	4 50AM	Ar Evansville (L.&N.Sta.) Lv	11 53PM	8 05AM	5 42PM	
	8 15AM	2 10PM	e10 00PM	Lv St. Louis (Union Sta.) (L.&N.) Ar	d 8 10AM	1 20PM	q	
	1 23PM	9 40PM	5 10AM	Lv Evansville (L.&N.Sta.) " Ar	11 40PM	*7 40AM	5 35PM	
	4 13PM	1 00AM	9 40AM	Ar Nashville " Lv	6 55PM	3 10AM	2 35PM	
	4 15PM	1 20AM	10 00AM	Lv Nashville (N.C.&St.L.) Ar	6 35PM	2 45AM	2 25PM	
			10 50AM	Lv Murfreesboro " Ar	5 35PM			
	f 8 53PM	2 55AM	11 48AM	Lv Tullahoma " Ar	4 23PM	12 47AM	c12 53PM	
	7 08PM	6 15AM	2 39PM	Ar Chattanooga " Lv	2 26PM	10 26PM	11 02AM	
	8 03PM	6 25AM	2 49PM	Lv Chattanooga (C.T.) " Ar	2 15PM	10 25PM	10 55AM	
	12 18AM	10 00AM	7 30PM	Ar Atlanta (Ua.Sta.) (E.T.) Lv	11 30AM	7 40PM	8 40AM	
	12 28AM			Lv Atlanta (Ua.Sta.) (A.B.&C.) Ar			8 30AM	
	7 12AM			Ar Waycross " Lv			1 43AM	
	7 20AM			Lv Waycross (A.C.L.) Ar			1 35AM	
	8 45AM			Ar Jacksonville (E.T.) " Lv			12 10AM	
		10 15AM	9 00PM	Lv Atlanta (Terminal Sta.) (C.of Ga.) Ar	8 00AM	7 00PM		
		12 45PM	11 30PM	Ar Macon " Lv	6 03AM	4 00PM		
		4 20PM	3 00AM	Ar Albany " Lv	2 10AM	1 10PM		
		4 30PM	3 10AM	Lv Albany (A.C.L.) Ar	2 00AM	1 00PM		
		6 25PM	4 16AM	Ar Tifton " Lv	12 39AM	11 35AM		
		9 00PM	6 52AM	Ar Waycross " Lv	10 00PM	9 20AM		
		10 00PM	8 00AM	Ar Jacksonville (E.T.) " Lv	9 00PM	7 30AM		
	9 40AM	11 00PM	8 30AM	Lv Jacksonville (E.T.) (F.E.C.) Ar	8 00PM	6 15AM	11 55PM	
	9 45AM	11 45PM	9 15AM	Lv St. Augustine " Lv	7 07PM	5 19AM	11 10PM	
	10 31AM	1 09AM	10 31AM	Lv Daytona Beach " Lv	5 51PM	4 01AM	10 00PM	
	1 00PM	4 36AM	2 01PM	Lv Fort Pierce " Lv	2 29PM	12 29AM	7 07PM	
	1 15PM	6 00AM	3 22PM	Lv West Palm Beach " Lv	12 51PM	10 55PM	6 46PM	
	1 44PM	6 37AM	4 00PM	Lv Delray Beach " Lv	12 12PM	10 14PM	6 15PM	
	1 16PM	7 10AM	4 42PM	Lv Fort Lauderdale " Lv	11 41AM	9 41PM	5 52PM	
	2 22PM	7 31AM	4 58PM	Lv Hollywood " Lv	11 26AM	9 25PM	5 41PM	
	2 55PM	8 15AM	5 35PM	Ar Miami (E.T.) " Lv	11 00AM	9 00PM	5 20PM	
	a9 00AM	e11 00PM	a 9 00AM	Lv Jacksonville (E.T.) (A.C.L.) Ar	a 6 10PM	a 5 15AM	a 6 10PM	
	12 53PM	2 47AM	12 53PM	Ar Ocala " Lv	1 23PM	d 1 48AM	1 23PM	
	5 23PM	6 56AM	5 27PM	Ar Clearwater " Lv	9 13AM	9 14PM	9 13AM	
	6 15PM	7 50AM	6 15PM	Ar St. Petersburg (E.T.) " Lv	8 45AM	8 40PM	8 45AM	
	a10 00AM	e11 00PM	a 9 00AM	Lv Jacksonville (E.T.) (A.C.L.) Ar	a 6 15PM	a 6 00AM	a 6 15PM	
	1 42PM	2 17AM	11 42AM	Ar Sanford " Lv	3 22PM	2 30AM	3 22PM	
	2 23PM	2 56AM	12 12PM	Ar Winter Park " Lv	2 38PM	1 35AM	2 38PM	
	2 48PM	3 11AM	12 38PM	Ar Orlando " Lv	2 13PM	1 15AM	2 13PM	
	3 56PM	4 15AM	f 1 38PM	Ar Haines City " Lv	f 1 38PM	11 45PM	f 1 38PM	
		6 10AM		Ar Lake Wales " Lv		9 25PM		
		7 12AM		Ar Sebring " Lv		7 18PM		
	•	6 42AM	•	Ar Winter Haven " Lv	•	9 00PM	•	
		8 46AM		Ar Punta Gorda " Lv		6 02PM		
		9 50AM		Ar Fort Myers " Lv		6 15PM		
	4 30PM	5 35AM	1 55PM	Ar Lakeland (E.T.) " Lv	12 58PM	11 10PM	12 58PM	
	5 45PM	7 00AM	3 00PM	Ar Tampa " Lv	12 15PM	10 00PM	12 15PM	
		9 21AM		Ar Bradenton " Lv		7 13PM		
		10 00AM		Ar Sarasota (via Orlando) (ET) " Lv		6 50PM		

VIA PERRY CUT-OFF AND ATLANTA

			b 9 00PM	Lv Atlanta (Term.St.) (E.T.) (C.of Ga.) Ar	b 9 00AM			
			2 10AM	Ar Albany " Lv	3 00AM			
			2 35AM	Lv Albany (A.C.L.) Ar	2 45AM			
			4 25AM	Ar Thomasville " Lv	12 50AM			
			9 25AM	Ar Trilby " Lv	7 20PM			
			11 15AM	Ar Clearwater " Lv	5 35PM			
			12 00N	Ar St. Petersburg (E.T.) " Lv	5 00PM			
			11 15AM	Ar Tampa (E.T.) " Lv	5 00PM			
			u 2 10PM	Ar Bradenton " Lv	u 3 15PM			
			u 2 40PM	Ar Sarasota " Lv	u 2 50PM			
			n 6 20PM	Ar Fort Myers (E.T.) " Lv	u12 30PM			

†—Operates only every third day. For dates see page 16.

•—Connecting Bus between Lake Alfred and Winter Haven (fare 15c).



Equipment Information in detail will be found on page 6.

a—Change of cars at Jacksonville. b—Change of cars at Atlan
d—Coach passengers arrive St. Louis 6:15AM. e—Coach passengers lea
St. Louis 9:20PM. f—Flag or conditional stop. h—Sleeping car rea
at 9:30PM. q—No direct connecting service northbound. r—Stops
revenue passengers from Evansville, Louisville and beyond, also
revenue passengers to Atlanta and beyond. t—Stops for revenue p
sengers from Atlanta and beyond also for revenue passengers to Eva
ville, Louisville and beyond. u—Via Tamiami Trail Tour Bus fr
and to Tampa. These buses honor railroad tickets via ACL.

E. T.—Eastern Time. C. T.—Central Time.

THE NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY

CONDENSED SCHEDULES AND THROUGH CAR SERVICE

CHICAGO AND ATLANTA

‡—Operates Every Third Day (For Dates See Table 1).

#11	33	97-85	35	TABLE 11	34	34-36	32	#12
AM	PM	PM	PM		AM	AM	PM	PM
8 00	2 00	7 30	10-45	Lv Chicago.....(C.&E.I.) Ar	7 00	7 30	2 40	10 55
1 23	8 40	5 10	5 10	Lv Evansville.....(L.&N.) Ar	11 40	12 30	7 40	5 10
4 23	1 00	8 20	9 40	Ar Nashville..... " Lv	8 35	7 40	3 10	2 35
4 33	1 20	10 40	10 40	Lv Nashville..(N.C.&St.L.) Ar	8 15	5 45	2 45	2 25
7 35	5 15	2 30	2 30	Ar Chattanooga..... " Lv	5 05	10 35	11 02	11 02
8 05	5 25	2 45	2 45	Lv Chattanooga....(CT) " Ar	4 45	10 25	10 55	10 55
12 18	10 00	7 30	7 30	Ar Atlanta(Un.Sta)(ET) " Lv	11 30	11 30	7 40	8 40
AM	AM	PM	PM		AM	AM	PM	AM

r—Sleeping cars ready for occupancy 9 30PM.

ST. LOUIS AND ATLANTA

#11	33	35	3	TABLE 12	34	32	4	#12
AM	PM	PM	AM		AM	PM	PM	PM
8 20	2 00	10-00	8 15	Lv St. Louis.....(L.&N.) Ar	8 10	1 20	5 40	n
1 23	8 40	5 10	1 40	Lv Evansville..... " Ar	11 40	7 40	12 15	5 25
4 23	1 00	9 40	6 25	Ar Nashville..... " Lv	8 35	3 10	6 50	2 35
4 33	1 20	10 40	9 00	Lv Nashville..(N.C.&St.L.) Ar	8 15	2 45	6 40	2 25
7 35	5 15	2 30	2 25	Ar Chattanooga..... " Lv	5 05	10 35	1 35	11 02
8 05	5 25	2 45	2 45	Lv Chattanooga....(CT) " Ar	4 45	10 25	1 15	10 55
12 18	10 00	7 30	8 15	Ar Atlanta(Un.St.)(ET) " Lv	11 30	7 40	9 30	8 40
AM	PM	PM	AM		AM	PM	PM	AM

r—Coach passengers may also leave St. Louis 9 20PM in thru coach arriving Nashville 9 20AM.

t—Coach passengers may also use through Nashville-St. Louis Coach arrive St. Louis 6 15AM.

n—No connection.

NASHVILLE AND ATLANTA

#11	33	3	91	35	TABLE 13	34	30	4	32	#12
PM	AM	PM	AM	AM	(N.C.&St.L.)	PM	PM	AM	AM	PM
4 33	1 10	9 00	10 40	10 00	Lv Nashville (Un.Sta.)..... Ar	8 35	5 15	6 40	2 45	2 25
7 35	5 15	2 25	2 50	2 30	Ar Chattanooga..... " Lv	5 05	1 05	1 35	10 35	11 02
8 05	5 25	2 45	3 00	2 45	Lv Chattanooga....(CT) " Ar	4 45	12 55	1 15	10 25	10 55
12 18	10 00	8 15	7 40	7 30	Ar Atlanta(Un.Sta.)(E.T.)... Lv	11 30	10 00	9 30	7 40	8 40
AM	AM	PM	PM	PM		AM	AM	PM	PM	AM

NASHVILLE AND CHATTANOOGA

#11	3	5	91	35	33	TABLE 14	32	34	30	6	4	#12
PM	PM	PM	AM	AM	AM	(N.C.&St.L.)	AM	PM	PM	PM	AM	PM
4 33	9 00	2 30	10 40	10 00	1 20	Lv Nashville..... Ar	2 45	8 35	5 15	12 15	6 40	2 25
7 35	2 25	5 30	2 50	2 30	5 15	Ar Chattanooga... Lv	10 35	5 05	1 05	7 00	1 35	11 02
PM	AM	PM	PM	PM	AM		PM	PM	PM	PM	PM	AM

CHATTANOOGA AND ATLANTA

#11	33	91	35	3	TABLE 15	4	34	30	32	#12
PM	AM	AM	PM	AM	(N.C.&St.L.)	AM	PM	PM	PM	AM
8 05	5 25	10 40	3 00	2 45	Lv Chattanooga (CT)..... Ar	1 15	2 15	12 55	10 25	10 55
12 18	10 00	7 40	7 30	8 15	Ar Atlanta (E.T.)..... Lv	9 30	11 30	10 00	7 40	8 40
AM	AM	PM	PM	AM		PM	AM	AM	PM	AM

NASHVILLE AND MEMPHIS

6-106	4-104	2-102	TABLE 16	101-1	103-3	105-5
PM	AM	PM		AM	PM	PM
1 45	8 00	11 00	Lv Nashville (Union Sta.).....(N.C.&St.L.) Ar	6 30	8 00	2 00
4 30	11 00	2 00	Ar Bruceton..... " Lv	3 25	5 00	11 25
6 13	12 58	3 57	Ar Jackson..... " Lv	1 30	3 05	9 42
7 20	2 10	5 15	Ar Somerville..... " Lv	12 16	1 45	8 39
8 20	3 45	6 50	Ar Memphis (Union Sta.)..... " Lv	11 00	12 30	7 30
PM	PM	AM		PM	PM	AM

NASHVILLE, KNOXVILLE, WASHINGTON AND NEW YORK

3	TABLE 17	4
PM		AM
9 00	Lv Nashville (Union Sta.).....(N.C.&St.L.) Ar	6 40
2 25	Ar Chattanooga..... " Lv	1 35
4 00	Lv Chattanooga.....(Southern) Ar	10 55
4 48	Ar Cleveland..... " Lv	10 00
5 20	Ar Athens..... " Lv	9 25
5 38	Ar Sweetwater..... " Lv	9 06
6 40	Ar Knoxville..... " Lv	8 05
7 50	Ar Morristown..... " Lv	6 55
10 33	Ar Newport.....(C.T.) " Lv	4 42
12 40	Ar Asheville.....(C.T.) " Lv	2 35
8 40	Ar Greeneville.....(C.T.) " Lv	6 05
9-12	Ar Jonesboro.....(C.T.) " Lv	5 39
9 26	Ar Johnson City.....(C.T.) " Lv	5 18
10 05	Ar Bristol.....(C.T.) " Lv	4 35
11 15	Lv Bristol.....(E.T.)(N&W) Ar	6 25
3 05	Ar Roanoke.....(E.T.) " Lv	1 35
4 25	Ar Lynchburg.....(E.T.) " Lv	12 10
8 30	Ar Washington.....(E.T.)(Southern) Lv	8105
9 42	Ar Baltimore.....(E.T.)(Penna.) Lv	4 30
11 18	Ar Phila., Pa.Sta (30th St.).....(E.T.) " Lv	2 22
1d10	Ar New York (Penna. Sta.).....(E.T.) " Lv	2220
8 10	Ar Boston (N.Y.N.H.&H.).....(E.T.)..... Lv	6 00
PM		PM

d—Change of cars at Washington and New York.

EQUIPMENT INFORMATION

TRAINS NOS. 11 and 12—THE DIXIE FLAGLER (COACH STREAMLINER) (SEE TABLE 18)—Every third day (for dates see Table 1)

Baggage-coach.....22 seats—Chicago-Miami. (Car No. DF1)
Coaches (3).....60 seats each—Chicago-Miami. (Car Nos. DF2 to 4)
Coach.....52 seats—Chicago-Miami. (Car No. DF5)
Tavern Car (Buffet) (Radio)—Chicago-Miami. (Car No. DF6)

All seats numbered—advance reservations necessary.

TRAINS NOS. 34 and 35—THE DIXIE FLYER (SEE TABLE 18)

Sleeping Cars.....Chicago and Jacksonville (10 Section) (Nos. 950sb, A40sb)
Chicago and Jacksonville (1 D. R., 2 Compt., 8 Sec.) (Nos. 951sb, A44sb)
*Chicago-Tampa (every 3rd day only, 1 D. R., 2 Compt., 8 Sec. (Nos. 956sb, A956sb).
*Chicago-St. Petersburg (2 out of every 3 days, 1 D. R., 2 Compt., 8 Sec. (Nos. 955sb, A955sb)
Chicago and Miami (8 Sec., 5 dbl. bedrooms) (Nos. 952sb, D200sb)
St. Louis and Atlanta (1 D. R., 12 Sec.) (Nos. L61sb, K38sb)
Dining Car.....Evansville and Atlanta.
Coaches.....Chicago-Jacksonville
St. Louis-Evansville : Evansville-Jacksonville. (Southbound leave St. Louis 9 20PM; northbound arrive St. Louis 6 15 AM).

Direct connection at Atlanta Union Station with through sleeping cars and coaches to and from St. Petersburg, Sarasota and Tampa, via Perry Cut-off; also to and from Augusta, Ga., Charleston, S. C., Wilmington, N. C., via Georgia R. R.

*Via Perry Cut-off on the Southland.

TRAINS NOS. 30-31—MAIL & EXPRESS SECTION—DIXIE FLYER (See Table 1)

Coaches.....Nashville and Atlanta.

TRAINS NOS. 32 and 33—THE DIXIE LIMITED (SEE TABLE 18)

Sleeping Cars.....Chicago and Jacksonville (1 D. R., 2 Compt., 8 Sec.) (Nos. 935sb, A128nb)
Chicago-Atlanta-Jacksonville (10 Section) (Nos. 930sb, K25nb)
Chicago-Atlanta (1 D. R., 1 Comp., 10 Sec.) (Nos. 931sb, K24nb)
St. Louis and Atlanta (1 D. R., 12 Section) (Nos. L43, K26nb)
Dining Car.....Chicago-Evansville; Chattanooga-Atlanta-Jacksonville
Coaches.....Chicago-Jacksonville.
St. Louis-Evansville.

Direct connection at Jacksonville Union Station with through sleeping cars and coaches to and from Miami, St. Petersburg, Sarasota, Tampa, Fort Myers and Sebring.

NASHVILLE-ATLANTA — SEE TABLE 13

NOS. 3 AND 4—DAILY
▲ Open-Section Sleeping Car Nashville-Atlanta (Car No. 1). Through Coaches.
NOS. 11, 12, 32, 33, 34, 35—(The Dixie Flagler, Dixie Limited and Dixie Flyer Equipment). Dining Car serving all meals.

NASHVILLE-CHATTANOOGA — SEE TABLE 14

NOS. 3 AND 4—DAILY
▲ Sleeping Cars—Coaches.
NOS. 11, 12, 32, 33, 34, 35—(The Dixie Flagler, Dixie Limited and Dixie Flyer Equipment). Dining Car serving all meals.

NASHVILLE-KNOXVILLE-WASHINGTON — SEE TABLE 17

NOS. 3 AND 4—TENNESSEAN—DAILY
Drawing-Room Open-Section Sleeping Car Nashville-Washington. (K37eb, S66wb)
Dining Car.....Serving all Meals
Coach Streamliner to Washington, D. C.
—Southern Railway System operates between Memphis and Washington "The Tennessean," latest modern streamlined train, which carries the Nashville-Washington sleeper affording convenient connecting service at Washington to Baltimore, Philadelphia, New York and east.

NASHVILLE-CHATTANOOGA — SEE TABLE 17

NOS. 5 and 6—The Lookout—DAILY
▲Cafe Coaches between Nashville and Chattanooga.
▲Coaches.

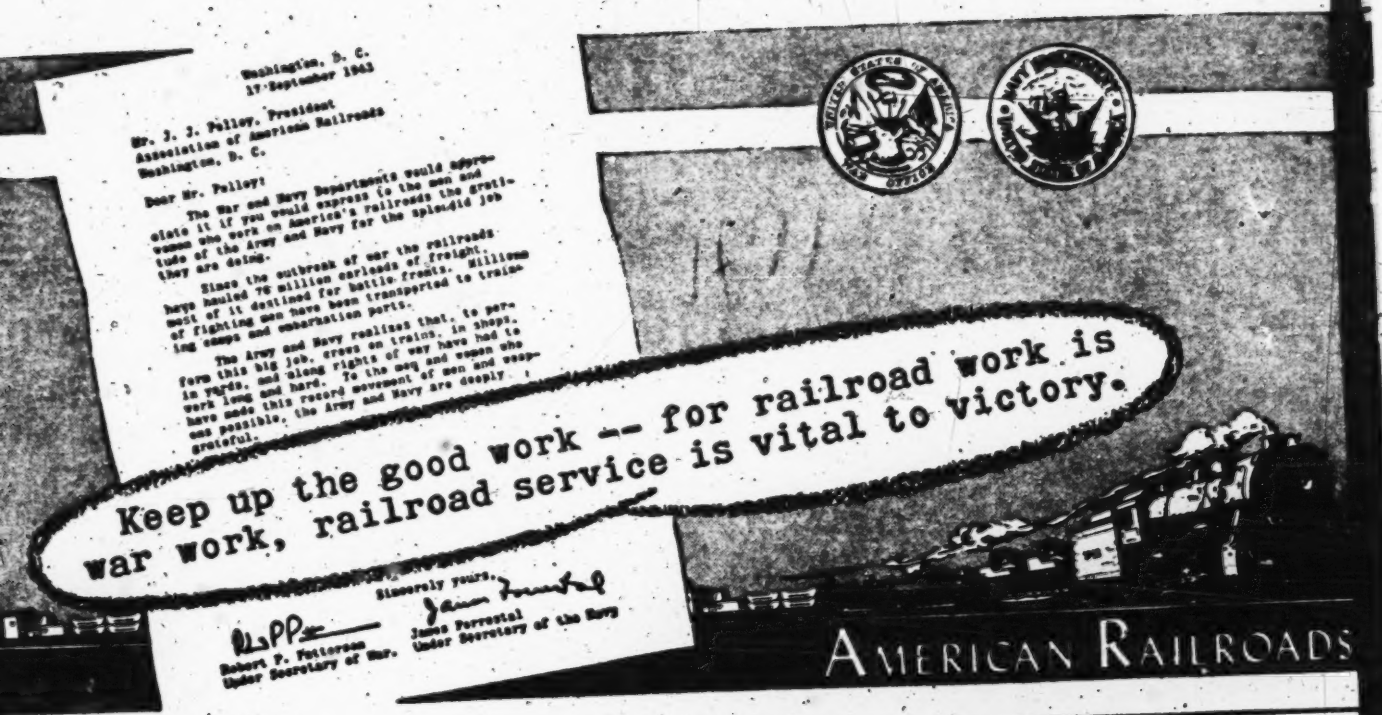
CHATTANOOGA-ATLANTA — SEE TABLE 15

NOS. 3 AND 4—DAILY
▲Coaches, Chattanooga-Atlanta. Sleeping Car Nashville-Atlanta.
NOS. 11, 12, 32, 33, 34, 35—DAILY (The Dixie Flagler, Dixie Limited and Dixie Flyer Equipment). Dining Car serving all meals.

NASHVILLE-MEMPHIS — SEE TABLE 16

NOS. 101-1, 2-102—DAILY.
▲Open Sec. Sleeping Car Nashville-Memphis (Car No. 7). Through Coaches, Sleepers open 9 30PM.

NO. 4-104—DAILY. A—through Coaches.
NOS. 6-105, 6-106, 103-3—DAILY.
▲Observation Cafe Coaches. Chattanooga-Nashville-Memphis. Through Coaches.
▲Regularly assigned cars Air-Conditioned.



PULLMAN SLEEPING CAR CHARGES—LOWER BERTH

(Subject to change without notice)

	From Nashville	From Chattanooga	From Atlanta
Atlanta, Ga.	$2.95		
Augusta, Ga.	4.35	2.95	2.35
Daytona Beach, Fla.	6.70	5.25	4.35
Chicago, Ill.	3.50	4.95	6.40
Evansville, Ind.	2.35	2.95	3.50
Cincinnati, O.	2.95	2.95	4.10
Jacksonville, Fla.	5.80	4.35	3.50
Knoxville, Tenn.	2.95		2.95
Louisville, Ky.	2.95	2.95	3.50
Macon, Ga.	3.50	2.95	
Miami, Fla.	8.70	7.55	6.40
Nashville, Tenn.			2.95

	From Nashville	From Chattanooga	From Atlanta
Asheville, N. C.	$3.50	$2.95	$2.95
Lynchburg, Va.	5.25	4.10	4.95
New York, N. Y.	7.85	7.55	7.55
Philadelphia, Pa.	6.95	6.70	6.70
St. Augustine, Fla.	6.15	4.65	4.10
St. Louis, Mo.	2.95	4.35	5.25
St. Petersburg, Fla.	7.85	6.70	5.25
Tampa, Fla.	7.85	6.40	4.95
Washington, D. C.	6.95	5.25	5.80
W. Palm Beach, Fla.	8.10	6.95	6.15
Memphis, Tenn.	2.95		

(Federal Tax Not Included)

CAFE-COACH SEAT FARES

From Nashville To	c	From Memphis To	c	From Chattanooga To	c
Bruceton	45	Somerville	25	Bridgeport	25
Lexington	50	Whiteville	30	Stevenson	25
Jackson	55	Mercer	35	Cowan	30
Somerville	70	Jackson	40	Decherd	30
Memphis	75	Lexington	50	Tullahoma	35
Murfreesboro	25	Bruceton	60	Wartrace	40
Tullahoma	30	Johnsonville	65	Bell Buckle	40
Cowan	35	Dickson	70	Murfreesboro	40
Chattanooga	50	Nashville	75	Nashville	50

(Federal Tax Not Included)

GENERAL INFORMATION

NOT RESPONSIBLE. The Nashville, Chattanooga & St. Louis Ry. is not responsible for errors or omissions in time-tables; inconvenience or damage resulting from delayed trains or failure to make connections. Schedules herein are subject to change without notice.

ADJUSTMENT OF DIFFERENCES. Conductors and agents are governed by the rules of the Company. In cases of dispute with them, it is best to pay the fare requested, take receipt and refer the matter to the General Passenger Agent, who will promptly investigate.

REDEMPTION OF TICKETS. Tickets of this Company's issue that have not been used, or only a portion of which have been used, when of any value, will be redeemed by the General Passenger Agent in accordance with established rules.

Do not fail to demand receipt for any extra tickets purchased or cash fare paid, for which claim for refund is likely to be filed.

CHILDREN under five years of age free, when accompanied by parent or guardian; five years of age and under twelve, one-half fare; twelve years of age and over, full fare.

LOST ARTICLES should be inquired for through General Passenger Agent, Nashville, or nearest representative. NO RESPONSIBILITY ASSUMED for unchecked articles left in stations or cars.

STOP-OVER PRIVILEGES

ONE-WAY TICKETS: Regular one-way tickets are limited to 30 days addition to date of sale and are good for stop-over privilege at all in mediate points within limit, upon application to Conductor.

ROUND-TRIP TICKETS: Stop-over privilege will be allowed at intermediate points in either direction on All Round-trip Tickets wit limit upon application to Conductor.

TIME
is doubly precious in
WAR-TIME!

Every minute Railway Express can save, in picking up or delivering your shipments—at your home, at your office or at your shipping platform—means quicker pick-up and delivery for every other shipper, throughout the day, thus enabling us to handle more shipments—including vital war supplies—FASTER.

Help us save time, in War-time.

RAILWAY EXPRESS AGENCY INC.
NATION-WIDE SERVICE



THE NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY

TOTAL MILEAGE 1,382.49

REPRESENTATIVES OF THE TRAFFIC DEPARTMENT

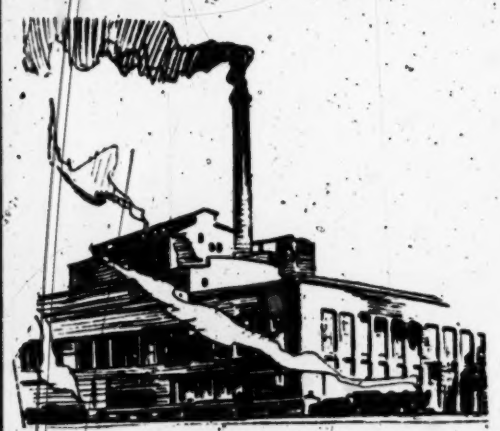
CHARLES BARHAM, Vice-President, Nashville, Tenn.—Tel. 6-6411. W. K. TATE, Assistant Vice-President, Nashville-3-Tenn.—Tel. 6-6411.

PASSENGER

J. GAFFNEY, JR., Gen. Pas. Agt.—Tel. 6-6794—Nashville-3-Tenn.
R. SCHLATTNER, Asst. to Gen. Pas. Agent—Tel. 6-6794.
L. MAYNES, Manager Dining Cars—Tel. 6-1767
lanta-3-Ga.—Room 908, 101 Marietta Street—Tel. Walnut 6925
G. B. Harris, Division Passenger Agent.
F. S. Laird, Passenger Traffic Agent.
C. L. Jackson, Passenger Traffic Agent—Tel. Main 5131.
J. M. Johnson, Ticket Agent, Joint City Ticket Office.
Piedmont Hote Bldg., 67 Luckie Street—Tel. Walnut 2726.
T. F. Lawrence, Ticket Agent Union Depot—Tel. Walnut 9666.
attanooga-2-Tenn.—Union Passenger Station—
W. S. Igou, Division Passenger Agent—Tel. 6-6251.
H. W. Tyson, Passenger Traffic Agent.
R. H. Short, Ticket Agent, Union Depot—Tel. 6-6657.
ago-3-Ill.—Room 800, Bankers Building, 105 West Adams Street—
Telephone State 2236—
W. S. Snodell, Northern Passenger Agent. L. D. Cary, Passenger Traffic Agent.
cksonville-1-Fla.—516 Graham Building—Tel. 5-2529—
P. C. Essins, Acting Florida Passenger Agent.
Knoxville-2-Tenn.—601 Hamilton National Bank Bldg.—Tel. 3-4229.
Frank P. Rauiston, General Agent.
Memphis-2-Tenn.—Room 604, Eighty-One Madison Bldg.—Tel. 5-5203
Joe M. Hall, Division Passenger Agent.
W. B. Reynolds, Passenger Traffic Agent.
C. M. Kelley, City Ticket Agt., Sunrise Bldg., 74 Monroe Ave.—Tel. 8-0567.
E. A. Gaulding, Ticket Agent, Union Station—Tel. 8-4101.
F. R. Schutt, Ticket Agent, Peabody Hotel—Tel. 8-3607.
Miami-32-Fla.—309 Southeast First Street—Tel. 3-7369
J. W. Chaney, Traveling Passenger Agent.
R. A. Lane, City Passenger Agent.
Nashville-3-Tenn.—319-323 Church Street.—Tel. 6-4322—
J. H. Howard, Div. Passenger Agt. F. W. Maness, Pas. Traffic Agt.
I. P. Barrett, Passenger Traffic Agent.
W. A. Lightfoot, Ticket Agent, Union Station—Tel. 5-9441.
St. Louis-1 Mo.—1850 Railway Exchange Building—Tel. Chestnut 5887—
D. T. O'Neal, Western Passenger Agent.
Tullahoma (Camp Forrest), Tenn.
H. M. Spangler, Passenger Traffic Agent.

FREIGHT

G. KIRK, Freight Traffic Manager—Tel. 6-6282—Nashville-3-Tenn.
R. WHARTON, General Freight Agent.
Service and Sales—Tel. 6-7329—
A. BURKE, Gen. Frt. Agt., Rates and Divisions—Tel. 6-1282—
W. SLOAN, Senior Assistant General Frt. Agt.—Divisions—Tel. 6-7129—
Nashville, Tenn.
K. O'CONNOR, Assistant Gen. Frt. Agt.—Rates—Tel. 6-1282—Nashville-3-Tenn.
J. STEGNER, Asst. Gen. Frt. Agt.—Service and Sales—Tel. Walnut 3985-86—
Atlanta, Ga.
L. WEILAND, Asst. Gen. Frt. Agent—Service and Sales—Tel. 6-6282—Nash-
ville-3-Tenn.
B. REYNOLDS, Asst. Gen. Frt. Agt.—Rates—Tel. 6-1282—Nashville-3-Tenn.
RL ROACH, Asst. to Gen. Frt. Agt.—Service and Sales—Tel. 6-7329
L. HANES, Commerce Agent—Tel. 6-7129—Nashville-3-Tenn.
A. SENTER, Gen. Development Agt.—Tel. 6-6282—Nashville-3-Tenn.
lanta-3-Ga.—101 Marietta Street—Tel. Walnut 0995—
T. M. Wilson, Division Freight Agent. A. D. Carter, Freight Traffic Agent.
C. T. Love, Commercial Agt. H. A. Bennett, Frt. Traf. Agt.
G. C. Holcombe, Live Stock Agt. G. T. Ward, Frt. Traf. Agt.
gusta, Ga.—619 620 Southern Finance Building—Tel. 2-5126.
C. W. Johnson, Frt. Traf. Agt.
E. H. Bolton, General Agent—Freight. C. W. Hart, Freight Traffic Agent.
rmingham-3-Ala.—Room 1220, Empire Bldg.—Tel. 4-2922.
W. R. Wilcox, General Agent.
rlotte-2-N. C.—415 Wilder Bldg.—Tel. 4-3524—C. B. Willingham, General Agent.
attanooga-2-Tenn.—120 West Ninth St.—Tels. 6-2531 and 6-6911—
H. G. Edmondson, General Agent—Freight.
W. E. Perkins, Commercial Agent. E. G. Tucker, Freight Traffic Agent.
T. G. Belcher, Frt. Traffic Agt. C. E. Murray, Frt. Traffic Agt.
E. W. Scofield, Frt. Traf. Agt.—Union Depot Baggage Room—Tel. 2-5876.
ago-3-Ill.—Room 800, Bankers Building, 105 West Adams Street—
Telephone Central 2701—J. M. Norton, General Northern Agent.
I. N. Phillips, Assistant General Northern Agent.
Geo. Javurek, Frt. Traffic Agent.
J. F. Stetson, Freight Traf. Agt. A. E. Marti, Freight Traf. Agt.
E. C. Falkenstein, Freight Traffic Agent.
ntsville, Ala.—N. C. & St. L. Depot, Tel. 395—Irby Holloway, General Agent.
kson, Tenn.—N. C. & St. L. Depot, South Royal Street—Tel. 165—
P. L. Rader, General Agent.
Jacksonville-1-Fla.—515 Graham Building—Tels. 5-2528 and 5-2529—
T. P. Grady, Florida Gen. Agt. W. S. Marshall, Frt. Traf. Agt.
Kansas City-6-Mo.—724 Railway Exchange Bldg.—Tel. Victor 5211—
Carl Jewell, General Agent—Freight. J. W. Joslin, Freight Traffic Agent.
Elmo Adams, Freight Traffic Agent. M. E. Sillin, Freight Traffic Agent.
Knoxville-2-Tenn.—601 Hamilton National Bank Bldg.—Tel. 3-4229—
Frank P. Rauiston, General Agent.
Louisville-2-Ky.—220 Heyburn Building—Telephone Jackson 3317—
L. L. Davis, General Agent. C. G. Conley, Frt. Traf. Agt.
Macon, Ga.—Macon Terminal Company Bldg.—Room 104—Tel. 911—
E. H. Forbes, General Agent—Freight
J. K. Sykes, Jr., Frt. Traf. Art. T. M. Faulkner, Frt. Traf. Agt.
Memphis-2-Tenn.—Eighty-One Madison Bldg.—Tel. 8-0627—
U. R. Watson, General Agent.
R. S. McCalles, Freight Traffic Agent. J. E. Crymes, Jr., Frt. Traf. Agt.
P. L. Saffer, Frt. Traf. Agt.
Miami-32-Fla.—1229 Ingraham Building—
R. E. Herrington, Commercial Agt. R. B. Elliott, Frt. Traf. Agt.—Tel. 2-7573.
Nashville-3-Tenn.—319-323 Church Street—Tel. 6-1175—
W. M. Whittemore, General Agent.
J. C. Davis, Frt. Traf. Agt. M. D. Tomlin, Frt. Traf. Agt.
Geo. F. Clark, Frt. Traf. Agt.
J. C. Sipe, Freight Traffic Agent, Union Station.
New York City-19-N. Y.—500 Fifth Avenue, Rooms 2923 and 2924—
Telephone Pennsylvania 6-4142—
A. T. Ridley, Gen. East. Agt. D. V. Saxon, Commercial Agent.
J. J. Lorden, Freight Traffic Agent.
Orlando, Fla.—G. G. Howell, Jr., Commercial Agent.
Rome, Ga.—John D. Grady, Freight Traffic Agent—Telephone 5003.
St. Louis-1-Mo.—1850-51 Railway Exchange Building—
Telephone Chestnut 0848—
J. V. McCarty, General Agent—Freight.
J. L. Knapp, Frt. Traf. Agt. J. H. Sutton, Frt. Traf. Agt.
R. H. Dierker, Freight Traffic Agent.
Savannah, Ga.—1012 Realty Building—Telephone 2-4634
T. N. Stevens, Commercial Agent.
Tampa-1-Fla.—310 Stovall Building—Telephone 3898—
C. F. Baker, Commercial Agent. W. T. Haskins, Freight Traffic Agent.
Washington-6-D. C.—621 Woodward Bldg., 15th & H Sts. N.W.. Tel, Republic 1229.
L. A. Heatherman, General Agent, Thomas H. Routenberg, Frt. Traf. Agt.

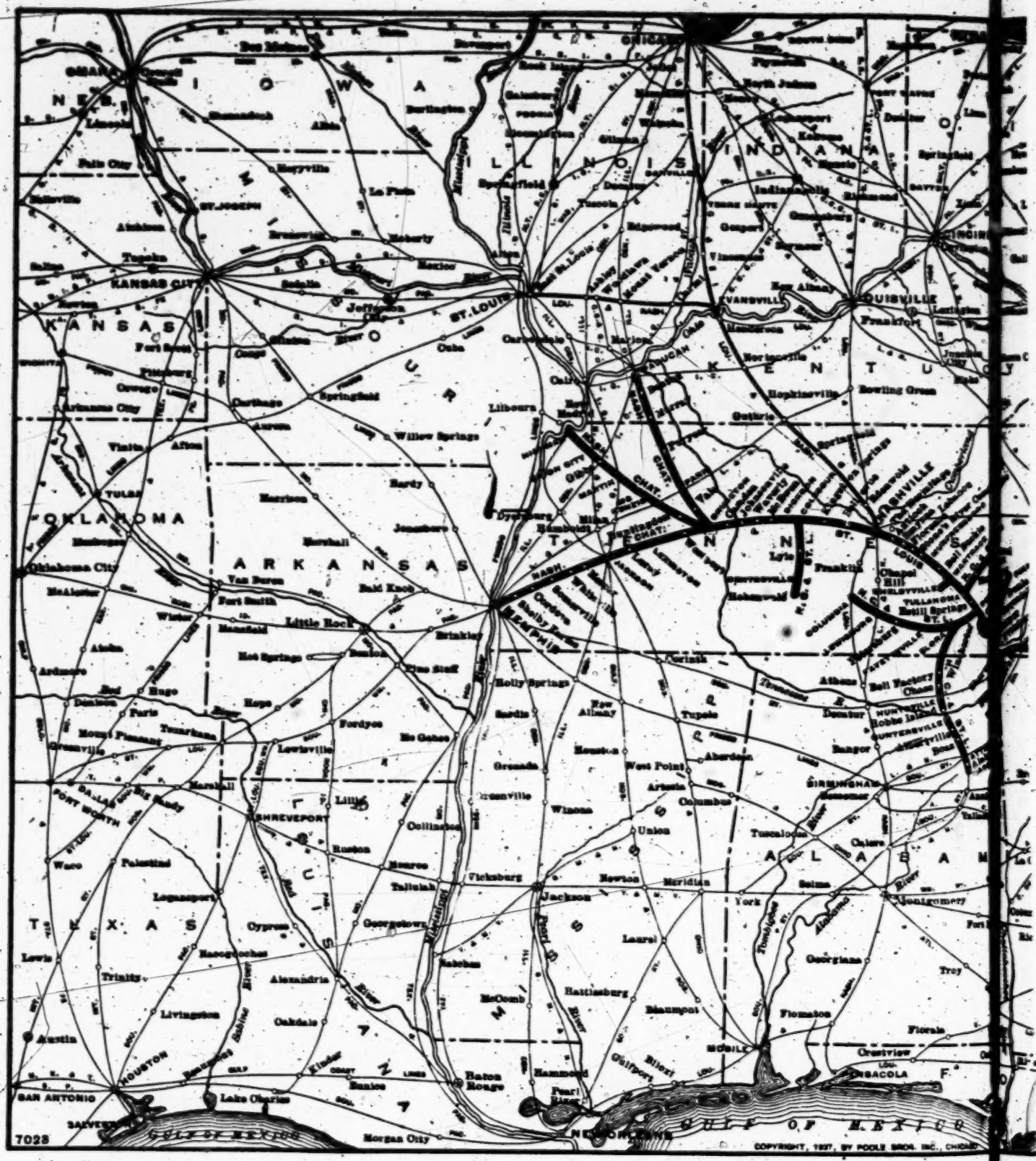


INDUSTRIAL OPPORTUNITIES

The territory served by The Nashville, Chattanooga & St. Louis Railway offers advantages for the successful operation of a wide variety of manufacturing plants.

For information concerning industrial sites, raw materials, power, labor, etc., please communicate with—

J. A. SENTER
GENERAL DEVELOPMENT AGENT
THE NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY
NASHVILLE-3-TENNESSEE


IOWA
ILLINOIS
INDIANA
KANSAS
OKLAHOMA
ARKANSAS
MISSOURI
KENTUCKY
TENNESSEE
MISSISSIPPI
ALABAMA
TEXAS
LOUISIANA
KANSAS CITY
ST. LOUIS
EVANSVILLE
LOUISVILLE
NASHVILLE
MEMPHIS
OKLAHOMA CITY
FORT SMITH
LITTLE ROCK
SHREVEPORT
DALLAS
FORT WORTH
HOUSTON
SAN ANTONIO
GALVESTON
BATON ROUGE
NEW ORLEANS
MOBILE
PENSACOLA
BIRMINGHAM
MONTGOMERY
GULF OF MEXICO
7028
COPYRIGHT, 1937, BY POOLE BROS. INC., CHICAGO


The Nashville,
Chattanooga
& St. Louis
Railway
AND CONNECTIONS
PENNSYLVANIA
WEST VIRGINIA
NORTH CAROLINA
SOUTH CAROLINA
GEORGIA
ATLANTIC OCEAN
GULF OF MEXICO
PITTSBURGH
PHILADELPHIA
BALTIMORE
WASHINGTON
NEW JERSEY
DEL.
MD.
VA.
KNOXVILLE
CHATTANOOGA
ATLANTA
AUGUSTA
MACON
CHARLESTON
WILMINGTON
JACKSONVILLE
MIAMI
ST. PETERSBURG
Raleigh
Charlotte
Columbia
Greenville
Asheville
Richmond
Norfolk
Danville
Roanoke
Lynchburg
Tallahassee
Lake City
Tampa
Orlando
Key West
Bay of Florida
STRAITS OF FLORIDA

13

14

THE NASHVILLE CHATTANOOGA & ST. LOUIS RAILWAY

TABLE 1 ATLANTA, CHATTANOOGA, NASHVILLE, MEMPHIS, HICKMAN AND PADUCAH

REFERENCE NOTES

*Train leaves Nashville, Nov. 11, 14, 17, 20, 23, 26, 29, Dec. 2, 5, 8, 11, 14, 17, 20, 23, 26, 29, Jan. 1, 4, 7, 10, 13, 16, 19, 22, 25, 28, 31, Feb. 3, 6, 9, 12, 15, 18, 21, 24, 27 and every 3rd day thereafter.

†Train leaves Atlanta, Nov. 13, 16, 19, 22, 25, 28, Dec. 1, 4, 7, 10, 13, 16, 19, 22, 25, 28, 31, Jan. 3, 6, 9, 12, 15, 18, 21, 24, 27, 30, Feb. 2, 5, 8, 11, 14, 17, 20, 23, 26, 29, and every 3rd day thereafter.

a–Flag stop Sundays only, for revenue passengers.

c–Stops to let off revenue passengers from Nashville and beyond, to take on revenue passengers for Memphis and beyond.

f–Flag stop.

g–Flag stop for revenue passengers only.

h–Stops for revenue passengers to and from Evansville, Louisville and beyond, also for revenue passengers to and from Atlanta and beyond.

fx–No. 92 stops at: Marietta, Ga., on flag to receive revenue passengers for Nashville or beyond.

Kingston, Ga., on flag to pick up revenue passengers for Chicago, St. Louis or beyond.

fx–No. 93 stops at: Dalton, Ga., to leave revenue passengers from Nashville or beyond, and stops on flag to take revenue passengers for Atlanta or beyond.

Marietta, Ga., to leave revenue passengers from Nashville and beyond.

fx–No. 94 stops at: Cowan, Decherd, Wartrace and Smyrna, Tenn., to let off revenue passengers from points beyond Chattanooga and to receive revenue passengers for Evansville, Louisville, Memphis and beyond.

fx–No. 95 stops at: Smyrna, Wartrace, Decherd and Cowan, Tenn., to let off revenue passengers from Memphis, Louisville, Evansville and beyond, and to receive revenue passengers for points beyond Chattanooga.

†112 Every 3rd day	30 Daily	94 Daily	4 Daily	92 Daily	6 Daily	Miles	ATLANTA DIVISION	95 Daily	91 Daily	3 Daily	5 Daily	93 Daily	*11 Every 3rd day
AM	AM	AM	PM	PM				PM	PM	AM		AM	AM
8 40	10 00	11 30	9 38	7 40		0.0	Lv Atlanta, Ga. (E.T.) Ar	7 30	7 40	8 15		10 00	12 18
			f 9 45			6.9	" Bolton			f 7 52			
							Chattahoochee River						
			f 9 52			11.1	" Vinings			f 7 45			
			f10 02			14.9	" Smyrna			f 7 36			
	10 41	12 10	10 12	f12 21		20.4	" Marietta	6 36	6 55	7 24	f x9 18		
			f10 23			28.6	" Kennesaw			7 02			
			f10 38			34.5	" Acworth			6 50			
						40.1	" Allatoona						
			f10 52			43.1	" Emerson			f 6 36			
							Etowah River						
	11 24	12 51	11 01			47.5	" Cartersville	5 52	6 13	6 28			
						52.3	" Cass						
						58.6	" Kingston			6 06			
			f11 38	f x9 23		63.6	" Halls			f 5 54			
			f11 46			68.5	" Adairsville			5 47			
			f11 55			74.7	" McDaniels			f 5 36			
	12 13	1 38	12 05			78.0	" Calhoun	5 05	5 25	5 30			
							Oostanaula River						
			f12 15			84.0	" Resaca			f 5 15			
			f12 25			90.3	" Tilton			f 5 05			
	12 42	2 07	12 45	10 18		99.1	" Dalton	4 37	4 55	4 52	f x7 22		
			f 1 02							f 4 36			
			f 1 19	f10 38		114.5	" Ringgold			4 24			
			f 1 26			120.2	" Graysville, Ga. (E.T.)			f 4 14			
			f12 33			126.0	" Chickamauga, Tenn. (C.T.)			f 3 05			
10 56	12 56	2 15	1 15	10 25		136.8	Ar Chattanooga, Tenn. Lv	2 40	3 00	2 45		5 25	8 03
							Tennessee River						
11 02	1 05	2 25	1 35	10 35	7 00	136.8	Lv **CHATTANOOGA DIVISION** Chattanooga, Tenn. Ar	2 30	2 50	2 25	7 30	5 15	7 56
						142.8	" Wauhatchie						
						147.0	" Hooker, Ga.						
					g 7 26	151.0	" Whiteside, Tenn.				g 6 45		
					g 7 39	158.5	" Shellmound				g 6 51		
							Tennessee River						
			2 24		7 53	166.9	" Bridgeport, Ala.			12 58	6 18		
			2 39		8 11	175.4	" Stevenson			12 40	6 32		
					g 8 19	181.7	" Bass, Ala.				6 45		
					g 8 25	186.2	" Anderson, Tenn.				6 51		
			g 3 07		8 35	192.1	" Sherwood			g12 10	6 56		
		f x4 03	3 32		8 59	201.1	" Cowan	12 x18		11 35	7 23		
	2 55	f x4 13	3 45	12 25	9 14	206.2	" Decherd	12 x07	12 36	11 25	7 33	3 10	
					9 27	211.3	" Estill Springs			g11 15	7 46		
b12 53	3 17	4 29	4 10	12 47	9 44	219.2	" Tullahoma	11 48	12 18	10 58	8 29	2 55	4 53
							(Camp Forrest)						
					g10 01	226.2	" Normandy				g 8 40		
					g10 06	230.3	" Haley				g 8 45		
	3 38	f x4 57			10 16	233.4	" Wartrace	11 x22		10 39	8 55		
		g 4 45			10 26	237.8	" Bell Buckle			g10 21	9 05		
					g10 34	243.1	" Fosterville				g 9 13		
					g10 40	247.0	" Christiana				g 9 19		
	4 11	5 35	5 17		10 56	256.8	" Murfreesboro	10 50	11 24	9 51	9 30		
							Stone's River						
						260.0	" National Cemetery						
	4 27	f x5 52	5 52		11 30	268.3	" Smyrna	10 x31	11 08	g 9 31	9 59		
					g11 40	272.8	" Lavergne				g10 08		
					11 50	279.0	" Antioch				10 18		
2 25	5 15	6 35	6 40	2 45	12 15	288.5	Ar Nashville, Tenn. Lv	10 00	10 40	9 00	10 30	1 20	4 33
							Cumberland River						
		2	4		6		**NASHVILLE DIVISION**	1		3	5		
		11 00	8 00		1 45	288.5	Lv Nashville, Tenn. Ar	6 30		8 00	2 00		
			g 8 22			301.2	" Bellevue	g 5 58		g 7 28			
			f 8 27			304.7	" Newsom	f 5 51		f 7 23			
			g 8 32			308.5	" Pegram	g 5 43		g 7 14			
		c11 46	8 39		2 22	313.9	" Kingston Springs	g 5 35		7 05			
		c11 58	8 50		2 33	319.0	" White Bluff	g 5 23		6 53			
		c12 08	8 59		g 2 42	325.9	" Burns	g 5 12		6 43			
			g 9 03			328.2	" Colesburg	g 5 07		f 6 38			
	12 23		9 11		2 55	330.4	" Dickson	5 02		6 32	12 50		
			g 9 18			333.5	" Pond			g 6 25			
		c12 37	9 27			338.5	" Tennessee City	g 4 43		f 6 15			
		c12 48	9 37		3 17	345.7	" McEwen	4 33		6 05			
			g 9 44			350.4	" Gorman	g 4 28					
	1 05		9 55		3 30	355.4	" Waverly	4 18		5 51	12 11		
	c 1 20		10 09			363.7	" Denver	g 4 04		g			
	c 1 25		10 14		3 46	366.3	" Johnsonville	g 3 59		5 31			
							Tennessee River						
			10 20			368.4	" Eva	g 3 54		5 25			
	c 1 40		10 30		4 01	374.6	Lv Camden Ar	3 44		5 16	11 40		
	2 00		11 00		4 30	383.4	Ar Bruceton Lv	3 25		5 00	11 25		
	2 10		11 15		4 45	383.4	Lv Bruceton Ar	3 15		4 45	11 15		
	3 57		12 58		6 18	441.4	" Jackson Lv	1 25		3 28	9 42		
	6 50		3 45		8 30	526.6	Ar Memphis, Tenn. Lv	11 00		12 30	7 30		
			11 20		5 00	333.4	Lv Bruceton Ar			4 45	11 00		
			11 59		5 40	405.6	Ar McKenzie, Tenn. Lv			5 23	10 20		
			2 00		7 50	460.0	Ar Hickman, Ky. Lv			1 30	8 10		
			11 35		5 15	383.4	Lv Bruceton, Tenn. Ar			4 10	10 35		
			12 17		5 57	405.5	Ar Paris, Tenn. Lv			3 21	9 52		
			2 15		8 00	469.6	Ar Paducah, Ky. Lv			1 30	8 00		
		AM	PM	AM	PM			PM		PM	AM		

THE DIXIE FLAGLER — DIXIE FLYER — DIXIE LIMITED — THE DIXIE FLAGLER

ADDITIONAL FLAG STOPS

Chattanooga Division

Nos. 5 and 6 stop on f... at Rucker, Florence, C... ner and Long Island ... revenue passengers.

Nashville Division

Nos. 1, 3 and 5 will ... at Belle Meade to discha... revenue passengers. Nos. ... and 4 will stop at Be... Meade on flag to ta... revenue passengers.

Nos. 1 and 4 stop on f... at Craggie Hope for reve... passengers.

Nos. 1 and 3 stop on f... at Sawyer's Mill for reve... passengers.

No. 3 stops on flag ... Craggie Hope.

No. 4 stops on flag ... Sawyer's Mill.

No. 4 stops on flag ... Vaughn's Gap for reve... passengers.

Nos. 3, 4, 5 and 6 sto... flag at Shoffner, Brevar... Dresden Crossing, Shu... and Dodd.

VALUABLE BAGGAGE

10 Cents will increase your baggage valuation allowance $100.00 Ask the Agent

BUY WAR SAVINGS BONDS AND STAMPS

Send a **Prepaid Ticket Order** for a railroad ticket Pullman ticket and ... pense money on rou... for your relative ... friend.

Any N. C. & St. L. Ticket Agent or Passenger Representative will be glad to talk to you about this special service.

Local schedules between Bruceton and Memphis see Table 2.

Local schedules between Bruceton and Hickman see Table 4.

Local schedules between Bruceton and Paducah see Table 3.

THE NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY

TABLE 2 ATLANTA, NASHVILLE, PADUCAH, BRUCETON AND MEMPHIS

4 Daily	94-2 Daily	Miles	Central Time	3 Daily	5 Daily	1-95 Daily
PM	AM			AM	PM	PM
9 30	11 30	0.0	Lv Atlanta, Ga. (E.T.) Ar	8 15		7 30
1 35	2 35	136.8	Lv Chattanooga, Tenn. (C.T.) Ar	2 25	7 30	4 30
8 00	11 00	288.5	Lv Nashville Ar	8 00	1 25	9 30
11 00	2 00	383.4	Ar Bruceton, Tenn. Lv	5 00	11 25	3 25
8 00		0.0	Lv Paducah, Ky. Ar	8 00	2 15	
10 35		86.2	Ar Bruceton, Tenn. Lv	5 15	11 35	
104 Daily	102 Daily		PADUCAH AND MEMPHIS DIVISION	103 Daily	105 Daily	101 Daily
11 15	2 10	0.0	Lv Bruceton Ar	4 45	11 15	3 15
11 27		6.1	" Buena Vista	f 4 33		
11 37		12.9	" Westport	4 23		
11 43		16.0	" Yuma	4 17		
11 50		20.9	" Wildersville	4 10		
f11 58		26.5	" Timberlake	f 4 02		
12 18	3 10	32.0	" Lexington	3 42	10 26	2 17
f12 27		41.6	" Huron	f 3 33		
f12 31		44.2	" Luray	f 3 29		
f12 38		47.5	Lv Beech Bluff	f 3 22		
12 50	3 57	58.0	Ar Jackson Lv	3 10	9 42	1 25
12 50	3 57	58.0	Lv Jackson Ar	3 10	9 42	1 25
g 1 16	g 4 18	67.6	" Healy Lv	f 2 44		
g 1 29	g 4 29	86.2	" Desmark	2 33		
g 1 39	g 4 30	74.6	" Mercer	g 2 23	g 9 13	b12 54
f 1 51	g 4 35	78.1	" Hatchie	g 2 21		
			Big Hatchie River			
f 1 35	g 4 40	80.8	" Vildo	f 2 16		
1 46	4 50	87.2	" Whiteville	2 06	8 56	b12 36
f 1 56	g 5 00	93.9	" Laconia	f 1 56		
2 16	5 15	100.2	" Somerville	1 45	8 39	b12 16
f 2 29	g 5 27	106.3	" Warren	f 1 33		
g 2 39	g 5 35	110.5	" Oakland	1 25		b11 64
f 2 47	g 5 45	114.5	" Hickory Withe	f 1 17		
f 2 54	g 5 52	118.4	" Rads	f 1 11		
3 06	g 6 04	126.6	" Cordova	1 01	8 01	
f 3 19	g 6 25	137.9	" Aulon	f12 48		
3 27	6 29	139.0	Lv Lenox	12 43	7 43	11 13
3 45	6 50	143.2	Ar Memphis, Tenn. Lv	12 30	7 30	11 00
PM	AM		Mississippi River	PM	AM	PM

b-Stops to let off revenue passengers from Memphis and beyond and to take on revenue passengers for Nashville and beyond.
f-Flag stop.
g-Stops to take and let off revenue passengers only.
Nos. 101 and 102 stop on signal at Hollow Rock to take and to discharge revenue passengers.
Nos. 102, 103, 104 and 106 stop on signal at Shelby Farms to take and to discharge revenue passengers.
No. 102 stops on signal at Barclair to receive or discharge revenue passengers.
No. 103 and No. 104 stop on flag at Life.
No. 103 stops at Hollow Rock to let off revenue passengers.
No. 104 stops on flag at Hollow Rock to receive revenue passengers.

TABLE 3 ATLANTA, MEMPHIS, BRUCETON AND PADUCAH

94-2 Daily	6 Daily	4 Daily	Miles	Central Time	5 Daily	3 Daily	1-95 Daily
AM	AM	PM			PM	AM	PM
11 30		9 30	0.0	Lv Atlanta, Ga. (E.T.) Ar		8 15	7 30
2 35	7 00	1 35	136.8	Lv Chattanooga, Tenn. Ar	7 30	2 25	4 30
11 00	1 45	8 00	288.5	Lv Nashville Ar	2 00	8 00	9 30
2 00	4 30	11 00	383.4	Ar Bruceton Lv	11 25	5 00	3 25
	103	105			104	106	
	12 30	7 30	0.0	Lv Memphis Ar	3 45	8 30	
	4 45	11 15	143.2	Ar Bruceton Lv	11 15	4 45	
	103 Daily	105 Daily		PADUCAH AND MEMPHIS DIVISION	104 Daily	106 Daily	
	PM	AM			AM	PM	
	5 15	11 35	.0	Lv Bruceton, Tenn. Ar	10 35	4 10	
f 5 25	f11 45		5.5	" Vale Lv	f10 20	f 3 55	
5 35	11 54		11.4	" Mansfield	10 10	3 45	
f 5 42	f12 01		15.6	Lv Van Dyke	f10 02	f 3 35	
5 57	12 17		22.1	Ar Paris Lv	9 52	3 21	
5 57	12 17		22.1	Lv Paris Ar	9 52	3 21	
6 10	12 27		27.5	Ar Whitlock Lv	9 36	3 07	
6 18	12 37		34.1	" Puryear, Tenn.	9 28	2 59	
6 28	12 46		37.1	" Hazel (State Line), Ky.	9 20	2 51	
f	f		40.5	" Tobacco	f	f	
6 49	1 08		44.8	" Murray	9 06	2 38	
f 6 56	f 1 15		51.0	" Almo	f 8 55	f 2 28	
f 7 05	f 1 24		54.3	" Dexter	f 8 49	f 2 22	
f 7 12	1 33		55.8	" Hardin	8 46	2 15	
f 7 21	f 1 42		59.9	" Glade	f 8 39	f 2 09	
7 31	1 54		63.9	" Beston	8 33	2 03	
f 7 38	f 1 59		68.2	" Iola	f 8 26	f 1 56	
f 7 52	f 2 09		72.1	" Elva	f 8 20	f 1 50	
f 7 59	f 2 17		77.1	" Oaks	f 8 12	f 1 42	
8 09	2 16		86.2	Ar Paducah, Ky.	8 00	1 30	
PM	PM		Ohio River	AM	PM		

TABLE 4 ATLANTA, NASHVILLE, BRUCETON AND HICKMAN

94-2 Daily	6 Daily	4 Daily	Miles	Central Time	5 Daily	3 Daily	1-95 Daily
AM	AM	PM			PM	AM	PM
11 30		9 30	0.0	Lv Atlanta, Ga. (E.T.) Ar		8 15	7 30
2 35	7 00	1 35	136.8	Lv Chattanooga, Tenn. (C.T.) Ar	7 30	2 25	4 30
11 00	1 45	8 00	288.5	Lv Nashville Ar	2 00	8 00	9 30
2 00	4 30	11 00	383.4	Ar Bruceton Lv	11 25	5 00	3 25
	6 Daily	4 Daily		NASHVILLE DIVISION	6 Daily	3 Daily	
	f 6 00	11 20	383.4	Lv Bruceton Ar	11 00	4 35	
	f 6 15	11 25	385.1	" Hollow Rock Lv	10 50	4 15	
	g 6 11	g11 32	389.7	" Rosser	g10 41	g 4 06	
	6 18	11 39	393.9	Lv Huntingdon Ar	10 35	4 00	
	6 18	11 39	405.6	Ar McKenzie Lv	10 20	3 45	
	6 34	11 59	405.6	Lv McKenzie Ar	10 20	3 45	
	6 34	12 05	413.4	" Gleason Lv	10 01	3 26	
	f 6 51	12 19	420.8	" Dresden	9 50	3 15	
	f 6 57	12 28	426.9	" Ralston	9 40	3 05	
	f 7 04	12 40	429.9	" Martin	9 34	2 59	
	f 7 14	12 56	432.7	" Gardner	f 9 20	2 44	
	f 7 21	1 06	436.1	" Terrell	f 9 14	2 38	
	f 7 28	1 16	439.9	" Gibbs	9 06	2 30	
	f 7 35	1 26	442.8	" Union City	8 55	2 17	
	f 7 42	1 36	448.5	" Woodland Mills, Tenn.	8 40	2 04	
	f 7 51	f 1 51	460.0	" State Line, Ky.	f 8 35	f 1 51	
	f 7 57	f 2 00	456.4	Lv Ryan Ar	g 8 20	g 1 40	
	8 30	2 30	460.0	Ar Hickman, Ky. Lv	8 10	1 30	
	PM	PM		Mississippi River	AM	PM	

f-Flag stop for revenue passengers only. Hico is flag stop for trains 3, 4, 5 and 6. f-Flag stop.

DECHERD, FAYETTEVILLE, COLUMBIA, HUNTSVILLE, GADSDEN

TABLE 5 For local service between Nashville and Chattanooga, see Table No. 1

149 Ex. Sun.	147 Ex. Sun.	Miles	DECHERD, FAYETTEVILLE and COLUMBIA	146 Ex. Sun.	148 Ex. Sun.
	AM			PM	PM
5 00	6 30	.0	Lv Decherd, Tenn. Ar	6 55	12 29
5 12	6 45	3.1	" Winchester	6 39	f12 05
f 5 22	f 6 55	7.2	" Kasserman	f 6 29	f11 53
5 28	7 06	9 0	" Belvidere	6 23	f11 47
5 34	7 14	12.0	" Maxwell	6 15	f11 41
5 40	7 25	14 4	" Beans Creek	6 05	f11 34
5 47	7 35	15.9	Lv Huntland Ar	6 00	11 30
6 05	7 50	21.6	Ar Elora Lv	5 40	11 17
	AM			AM	
	7 55	21.6	Lv Elora Ar		
	8 10	26.6	" Flintville		
	f 8 17	28.2	" Brighton		
	8 29	31.9	Lv Kelso Ar		
	9 00	38.8	Ar Fayetteville Lv		
	10 15	38.8	Lv Fayetteville Ar		
	f10 35	45 6	" Howell		
	10 55	52 0	" Petersburg		
	f11 15	56.1	" Talley		
	f11 30	61.1	Lv Belfast Ar		
	12 01	66 8	Ar Lewisburg Lv		
	1 10	66 8	Lv Lewisburg Ar		
	f 1 30	73 8	Ar Silver Creek Lv	f12 52	
	f 1 34	74 8	" Bryant	f12 48	
	f 1 39	76.6	" Park	f12 43	
	f 1 46	79 3	" Hills	f12 36	
	2 05	86.3	Ar Columbia, Tenn. Lv	12 15	
	PM		(Duck River)	PM	

Mixed Train Service

Try the Air-Conditioned Observation Cafe-Coach Between Nashville and Memphis Also on the Lookout Between Nashville and Chattanooga

149 Ex Su	Miles	DECHERD AND HUNTSVILLE	148 Ex Su
AM			PM
5 00	.0	Lv Decherd, Tenn. Ar	12 29
6 05	21.6	Ar Elora Lv	11 17
6 10	21.6	Lv Elora Ar	11 14
6 22	26.7	" Pievna, Ala.	11 02
6 32	30 8	" New Market	10 52
f 6 42	35.0	" Deposit	f10 42
f 6 47	37.2	" Bell Factory	f10 34
f 7 01	42 6	Lv Chase Ar	f10 20
7 30	48.6	Ar Huntsville Lv	10 00
AM			AM

199 Mixed Ex Su	Miles	GUNTERSVILLE AND GADSDEN	200 Mixed Ex Su
		Tennessee River	
AM			PM
10 15	.0	Lv Guntersville Ar	3 35
f10 20	2.1	" Rayburn	f 3 29
f10 35	6 1	" Lane	f 3 12
10 55	10.3	" Albertville	2 50
11 15	15 6	" Boaz	2 30
f11 25	19.3	" Mountainboro	f 2 20
f11 30	20 7	" Carlisle	f 2 15
11 45	24.6	" Sligo	f 2 00
11 49	26.0	" Littleton	1 56
12 20	30 4	" Attalla	1 40
12 35	33 3	Lv Alabama City Ar	1 25
12 50	35.3	Ar Gadsden, Ala. Lv	1 10
PM			PM

BUY WAR SAVINGS BONDS AND STAMPS

CAFE COACH SERVICE

Observation—Air-Conditioned—Reclining Chairs

BETWEEN

NASHVILLE—MEMPHIS

NASHVILLE—CHATTANOOGA

Comfortable—Clean—Quiet

Good Meals—Reasonable Prices

WESTERN UNION TELEGRAMS

May be sent from any telegraph station. Domestic Service. Full Rate Telegams (fast service at reasonable rates) Day Letters (inexpensive deferred service) Night Letters (overnight service at reduced rates.) The porter will send your telegram or cablegram from the next station.

TABLE 6 **BRIDGEPORT AND PIKEVILLE**

189 Mixed Daily Ex. Sun	Miles		188 Mixed Daily Ex. Sun
Mixed		PIKEVILLE BRANCH	Mixed
A.M.		Tennessee River	P.M.
6 00	.0	Lv **Bridgeport, Ala.** Ar	1 15
6 10	2.8	" Richard City, Tenn	12 43
6 25	4.5	" So. Pittsburg	12 33
f 6 34	7.6	" Kimball	f12 13
6 45	11.7	" Jasper	12 01
6 55	15.5	" Sequatchie	11 45
7 05	19.0	" Victoria	11 32
7 20	22.6	" Whitwell	11 20
f 7 30	25.8	" Shirleyton	f11 08
7 43	32.3	" Daus	10 50
7 58	37.0	" Dunlap	10 35
f 8 15	42.2	" Mt. Airy	f10 15
f 8 24	44.9	" Pailo	f10 05
8 32	48.3	" College	9 56
f 8 42	51.9	Lv Lees Ar	f 9 45
9 00	56.8	Ar **Pikeville, Tenn.** Lv	9 30
A.M.			A.M.

TABLE 7 **COWAN, TRACY CITY & PALMER**

A.M.			P.M.
.....	.....	Lv Nashville Ar	f12 15
7 00	.....	Lv Chattanooga Ar	.....
133 Ex. Su	Miles	MIXED TRAIN SERVICE	132 Ex. Su
A.M.			A.M.
10 10	.0	Lv **Cowan, Tenn.** Ar	8 35
11 05	8.0	" Sewanee Lv	7 55
g	9.9	" St. Andrews	g
11 35	13.8	" Monteagle	7 25
g	16.1	Lv Summerfield "	g
11 55	19.9	Ar **Tracy City, Tenn.** Lv	7 00
A.M.			A.M.

g—Flag stop for revenue passengers only.
Mixed train service only on this branch. Baggage handled on these trains.

TRACY CITY AND PALMER

131 Ex. Su	Miles	MIXED TRAIN SERVICE	130 Ex. Su
A.M.			P.M.
10 00	19.9	Lv **Tracy City, Tenn.** Ar	1 15
10 20	26.8	Ar Coalmont Lv	12 50
11AM00	37.6	Ar **Palmer, Tenn.** Lv	12P001

Gruetli, Keys, Henley and Collins are flag stops for Nos. 130 and 131. f—Flag stop.

Taxi service daily between Cowan and Monteagle, leaving Cowan at 9:15 A.M., 12:25 P.M., 4:10 P.M., 5:15 P.M.; leaving Monteagle at 8:40 A.M., 11:00 A.M., 2:40 P.M., 3:40 P.M., stopping at Sewanee and St. Andrews. Tickets reading through from Nashville or points beyond, or from Chattanooga or points beyond, destined to Sewanee or Monteagle; also from Monteagle or Sewanee to Nashville or points beyond, or to Chattanooga or points beyond, will be honored in taxi service without additional charge, on advance notice to Conductor or Agents at Cowan or Sewanee. Baggage handled on mixed trains. Holders of tickets to Cowan (proper) will make own arrangements and pay regular taxi charges.

NATIONAL DAYLIGHT SAVING TIME

By an act of Congress, the standard time in each of t present time zones throughout the United States was a vanced one hour on February 9, 1942.

The N. C. & St. L. Rwy. advanced its services to co form with the Act. It should be understood that t train schedules shown herein are, therefore, automatica correct under the **Daylight Saving Act.**

TABLE 8 **TULLAHOMA AND SPARTA**

		185 Mixed Ex. Su	Miles	SPARTA BRANCH		184 Mixed Ex. Su
		A.M.				P.M.
.....	.....	5 25	.0	Lv **Tullahoma, Tenn.**	Ar	3 00
.....	.....	6 05	11.7	" Manchester	Lv	2 10
.....	.....	6 30	19.2	" Summitville	"	1 45
.....	.....	6 45	24.3	" Morrison	"	1 30
.....	.....	7 00	29.5	" Smartts	"	1 15
.....	.....	7 55	34.2	" McMinnville	"	1 00
.....	.....	8 15	41.4	" Rowland	"	11 59
.....	.....	8 25	44.5	" Campaign	"	11 49
.....	.....	8 32	46.4	" Rock Island	"	11 39
.....	.....	8 37	48.0	" Walling	"	11 33
.....	.....	8 45	49.9	" Quebeck	"	11 27
.....	.....	9 07	54.2	Lv Doyle	Ar	11 15
.....	.....	9 22	60.5	Ar **Sparta, Tenn.**	Lv	11 00
.....	.....	A.M.				A.M.

For local service between Nashville and Chattanooga, see Table 1.
Belmont is flag stop for Nos. 184 and 185.

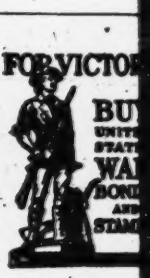


TABLE 9 **WARTRACE AND SHELBYVILLE**

		A.M.			P.M.	P.M.	
.....	.....	10 00	.....	Lv Nashville Ar	12 15	6 35	
.....	.....	7 00	.....	Lv Chattanooga Ar	.....	7 30	
		225: Ex. Su	221: Ex. Su	SHELBYVILLE BRANCH	220: Ex. Su	224: Ex. Su	‡Mixed Train.
		A.M.	A.M.		P.M.	P.M.	
.....	.....	11 55	8 00	Lv **Wartrace, Tenn.** Ar	10 10	2 55	‡
.....	.....	12 20	8 25	Ar **Shelbyville, Tenn.** Lv	9 45	2 30	
		P.M.	A.M.	Duck River	A.M.	P.M.	

For local service between Nashville and Chattanooga, see Table 1.
Grays and Coldwell are flag stops for all trains.

TABLE 10 **DICKSON, CENTREVILLE AND HOHENWALD**

		A.M.				
.....	.....	8 00	.....	Lv Nashville Ar		.....
		161 Mixed Mo.We.Fr	Miles	CENTREVILLE BRANCH		162 Mixed Tu.Th.Sa
		A.M.				A.M.
.....	.....	9 20	.0	Lv **Dickson, Tenn.**	Ar	6 15
.....	.....	9 30	2.2	" Colesburg	Lv	5 45
.....	.....	f9 38	4.9	" Pomona	"	f5 36
.....	.....	f9 45	6.6	" Tidwell	"	f5 30
.....	.....	f9 51	8.2	" Iron Hill	"	f5 22
.....	.....	f10 01	11.0	" Bon Aqua	"	f5 12
.....	.....	10 30	14.4	" Lyle	"	5 01
.....	.....	f10 56	22.8	" Graham	"	f4 31
.....	.....	11 06	24.3	" Nunnelly	"	4 26
.....	.....	f11 14	26.1	" Goodrich	"	f4 18
.....	.....	f11 30	30.0	" Grisders	"	f4 05
				Duck River		
.....	.....	11 45	32.3	" Centreville	"	3 55
.....	.....	11 55	33.4	" Twomey	"	3 50
.....	.....	f12 03	35.2	" Deans	"	f3 35
.....	.....	f12 15	38.2	" Watson	"	f3 25
.....	.....	f12 20	39.1	" Buffalo	"	f3 20
.....	.....	f12 32	42.4	" Aetna	"	f3 05
.....	.....	f12 47	45.6	" Kimmins	"	f2 55
.....	.....	1 07	52.1	" Hohenwald	"	2 35
		P.M.				A.M.

For local service between Nashville and Dickson, see Table 1.

Adiff, Bates, Brown, Rodgers, Bluntly, Kitchens, Myers

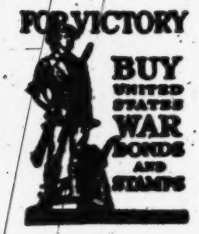
INDEX OF STATIONS ON THE NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY

Stations	Table	Pop. 1940	Elevation
Bliff, Tenn.	10	75	915
Cworth, Ga.		1267	913
Adairsville, Ga.		827	707
Ætna, Tenn.	10	100	907
Alabama City, Ala.	3	8544	540
Albertville, Ala.	3	3651	1056
Allatoona, Ga.		50	865
Almo, Ky.	3	154	430
Anderson, Tenn.		175	636
Antioch, Tenn.		250	614
Atlanta, Ga.	1.2.3.4.6.7.8.9	302288	1033
Attalla, Ala.	3	4865	537
Aulon, Tenn.	2		284
Bass, Ala.	1	75	200
Bates, Tenn.	10	12	723
Beans Creek, Tenn.	3	75	873
Beech Bluff, Tenn.	3	100	387
Belfast, Tenn.	3	150	829
Bell Buckle, Tenn.	3	356	837
Bellcraft			1053
Bellevue, Tenn.	1	300	595
Bell Factory, Ala.	3	68	705
Belmont, Tenn.	3	50	1052
Belvidere, Tenn.	3	120	968
Benton, Ky.	3	1906	374
Berclair, Tenn.	3	150	278
Bloody, Tenn.	10	50	961
Boaz, Ala.	3	1927	1070
Bolton, Ga.		1000	696
Bon Aqua, Tenn.	10	250	835
Boyce, Tenn.	1		682
Bridgeport, Ala.	3	2031	661
Brighton, Tenn.	3	8	945
Brown, Tenn.	10		735
Bruceton, Tenn.	1.2.3.4	1003	404
Brush Creek, Tenn.	6		774
Bryant, Tenn.	6		685
Buena Vista, Tenn.	6.7	150	505
Buffalo, Tenn.	10		862
Burns, Tenn.	1	600	796
Calhoun, Ga.	1	2955	645
Camden, Tenn.	1	992	408
Campaign, Tenn.	3	600	924
Carlisle, Ala.	3	100	1070
Cartersville, Ga.	3	6141	746
Cartwright, Tenn.	6		689
Cass, Ga.	3	50	753
Centreville, Tenn.	10	1030	485
Chase, Ala.	3	200	720
Chattanooga, Tenn.	1.2.3.4.6.7.8.9	128163	671
Chickamauga, Tenn.	1	109	677
Christiana, Tenn.	1	350	697
Clouse Hill Jct., Tenn.	1		1908
Coalmont, Tenn.	1	600	1880
Colesburg, Tenn.	10	50	861
College, Tenn.	1		809
Columbia, Tenn.	1	10579	666
Condra, Tenn.	1		677
Cordova, Tenn.	1	200	363
Cortner, Tenn.	1	76	833
Cowan, Tenn.	1-7	1461	971
Craggie Hope, Tenn.	1	75	555
Cravens, Tenn.	1		665
Dalton, Ga.	1	10448	758
Daus, Tenn.	6	250	716
Deans, Tenn.	10		568
Decherd, Tenn.	1-3	868	958
Denmark, Tenn.	2	81	370
Denver, Tenn.	1	91	378
Deposit, Ala.	3	50	758
Dexter, Ky.	3	243	413
Dickson, Tenn.	1	3504	800
Doyle, Tenn.	3	500	957
Dresden, Tenn.	4	1115	457
Dresden Crossing, Tenn.	4		347
Dunlap, Tenn.	6	721	720
Eads, Tenn.	2	200	338
Elizabeth, Ga.	3	800	1137
Elora, Tenn.	6	600	925
Elva, Ky.	3	45	349
Emerson, Ga.	3	453	828
Estill Spgs., Tenn.	1	500	944
Etna, Tenn.	1		906
Eva, Tenn.	1	350	367
Fayetteville, Tenn.	5	4684	665
Flintville, Tenn.	6	195	901
Florence, Tenn.	7		554
Fosterville, Tenn.	1	311	844
Gadsden, Ala.	5	36975	557
Gardner, Tenn.	4	200	341
Gibbs, Tenn.	4	100	318
Glade, Ky.	3	25	556

Stations	Table	Pop. 1940	Elevation
Gleason, Tenn.	4	883	407
Glencliff, Tenn.	1		459
§Glendale, Tenn.	1		663
Goodrich, Tenn.	10	80	554
Gorman, Tenn.	1	215	627
Graham, Tenn.	10	85	565
Graysville, Ga.	1	126	697
Grisetli, Tenn.	7	300	1891
Grinders, Tenn.	10	12	735
Gunters Ldg., Ala.	3		581
Guntersville, Ala.	3	4398	593
Haley, Tenn.	1	150	837
Halls, Ga.	1	150	774
Hardin, Ky.	3	414	419
§Hatchie, Tenn.	3	75	320
Hazel, Ky.	3	396	557
§Hickerson, Tenn.	1	25	1011
ƒHickman, Ky.	4	2268	307
ƒHickory Withe, Tenn.	1		312
§Hicks, Tenn.	1	25	600
Hico, Tenn.	1	10	425
Hill, Tenn.	3	50	614
§Hill Top, Tenn.	1		517
Hobbs Island, Ala.	3	200	583
Hohenwald, Tenn.	10	1086	967
Hollow Rock, Tenn.	4	422	418
Hooker, Ga.	1		872
Howard, Tenn.	11		685
Howell, Tenn.	3	180	705
ƒHuntingdon, Tenn.	3	1432	420
Huntland, Tenn.	3	303	938
Huntsville, Ala.	3	13050	606
§Huntsville Arsenal, Ala.	3		600
Huron, Tenn.	2	52	412
§Incline, Ala.	3		581
Iola, Ky.	3	25	348
Iron Hill, Tenn.	10	10	840
ƒJackson, Tenn.	1.2	24[illegible]	350
Jasper, Tenn.	1	[illegible]51	620
Johnsonville, Tenn.	1	280	370
Kasserman, Tenn.	3	10	1006
Kelso, Tenn.	3	95	740
Kennesaw, Ga.	1	436	1091
Kimball, Tenn.	6	200	615
Kimmins, Tenn.	10	150	955
ƒKingston, Ga.	1	653	697
Kingston Spgs., Tenn.	1	260	517
Kitchens, Tenn.	10		729
§Knox, Tenn.	2	20	449
Laconia, Tenn.	2	50	434
§Ladds, Tenn.	1	200	690
Lane, Ala.	3	10	955
Lavergne, Tenn.	1	183	856
Lees, Tenn.	3	100	847
Lenox, Tenn.	3		307
Lewisburg, Tenn.	3	3582	740
ƒLexington, Tenn.	3	2526	492
Life, Tenn.	3	27	509
§Lily Flagg, Ala.	3	60	596
§Lipe, Tenn.	3	90	406
Littleton, Ala.	3	12	646
§Long Island, Ala.	3	100	647
Luray, Tenn.	2	200	400
Lyle, Tenn.	10	600	872
McDaniels, Ga.	1	35	654
McEwen, Tenn.	1	617	839
ƒMcKenzie, Tenn.	4	2019	494
ƒMcMinnville, Tenn.	3	4649	909
Manchester, Tenn.	3	1715	1031
Mansfield, Tenn.	3	100	459
ƒMarietta, Ga.	1	8667	1117
ƒMartin, Tenn.	4	3587	412
Maxwell, Tenn.	5	150	930
ƒMemphis, Tenn.	1.2.3	292942	260
Mercer, Tenn.	2	350	339
§Mercury, Ala.	5		764
Monteagle, Tenn.	7	600	1922
Moore, Tenn.	10		757
Morrison, Tenn.	3	278	1074
Mountainboro, Ala.	3	100	1102
Mt. Airy, Tenn.	6	25	752
ƒMurfreesboro, Tenn.	3	9495	571
ƒMurray, Ky.	3	3773	576
ƒNashville, Tenn.	1.2.3.4.7.8.9.10	167402	455
Nat. Cemetery, Tenn.	1		561
Neely, Tenn.	1	40	483
New Market, Ala.	3	200	722
Newsom, Tenn.	1	15	598
Noonday, Ga.	1		1037
Normal, Ala.	3	100	721
Normandy, Tenn.	1	163	828
Nunnelly, Tenn.	10	520	300

Stations	Table	Pop. 1940	Elevation
Oakland, Tenn.	1	251	300
Oaks, Ky.	3	10	341
Orme, Tenn.	3	277	838
ƒPaducah, Ky.	1.2.3	33765	340
Pailo, Tenn.	1	25	755
Palmer, Tenn.	1	1228	1800
ƒParis, Tenn.	3	6395	508
Park, Tenn.	3	50	663
Pegram, Tenn.	1	300	543
Petersburg, Tenn.	3	581	740
ƒPikeville, Tenn.	3	759	871
Plevna, Ala.	3	100	850
Pomona, Tenn.	10	25	870
Pond, Tenn.	1	50	909
§Pursley, Tenn.	1		452
Puryear, Tenn.	3	368	607
Quebeck, Tenn.	3	400	897
Ralston, Tenn.	4	40	484
§Redstone, Ala.	3	100	591
Resaca, Ga.	1	121	642
Richard City, Tenn.	3	1008	622
Ringgold, Ga.	1	882	780
Rock Island, Tenn.	3	90	881
Rockledge, Tenn.	3		821
Rocky Face, Ga.	1	100	765
§Rodemer, Tenn.	10		791
Rosser, Tenn.	3	40	480
Rowland, Tenn.	3	40	971
§Rucker, Tenn.	3	100	672
Ryan, Ky.	4		342
Sawyers Mill, Tenn.	1		421
Sequatchie, Tenn.	3	400	831
ƒSewanee, Tenn.	7	1600	1860
Shelby Farms, Tenn.	1		284
ƒShelbyville, Tenn.	3	6537	761
Shellmound, Tenn.	1	20	626
Sherwood, Tenn.	1	1275	661
Shirleyton, Tenn.	3		662
Shoffner, Tenn.	4	10	309
Shucks, Ky.	4		327
Silver Creek, Tenn.	3	25	716
Sligo, Ala.	3	7	756
Smartts, Tenn.	3	75	1009
Smyrna, Tenn.	1	493	543
Smyrna, Ga.	1	1440	1000
ƒSomerville, Tenn.	2	1570	350
ƒSo. Pittsburg, Tenn.	6	2285	620
ƒSparta, Tenn.	3	2506	915
St. Andrews, Tenn.	1	25	1945
State Line, Ky.	4	32	371
ƒStevenson, Ala.	1	793	622
Summerfield, Tenn.	7		1875
Summitville, Tenn.	3	350	1114
Talley, Tenn.	5	25	805
Tenn. City, Tenn.	1	100	828
Terrell, Tenn.	4	124	338
Tidwell, Tenn.	10	25	881
Tilton, Ga.	1	93	652
Timberlake, Tenn.	3		589
Tobacco, Ky.	3	15	502
Tracy City, Tenn.	1	2000	1829
ƒTullahoma, Tenn.	1.3	4549	1067
Tunnel Hill, Ga.	1	255	836
Twomey, Tenn.	10	15	485
§Tyser, Tenn.	1		680
ƒUnion City, Tenn.	4	7256	337
Vale, Tenn.	3	82	415
Van Dyke, Tenn.	1		419
§Vaughns Gap, Tenn.	1	50	666
Victoria, Tenn.	6	300	677
Vildo, Tenn.	1	50	336
Vinings, Ga.	1	200	931
Walling, Tenn.	3	70	898
Warren, Tenn.	1	100	407
ƒWartrace, Tenn.	1	552	824
Watson, Tenn.	10	2	831
Wauhatchie, Tenn.	1	21	675
ƒWaverly, Tenn.	3	1318	526
Westport, Tenn.	1	150	432
White Bluff, Tenn.	1	522	820
Whiteside, Tenn.	1	500	872
ƒWhiteville, Tenn.	2	796	489
Whitlock, Tenn.	1	150	527
Whitwell, Tenn.	3	2500	658
Wildersville, Tenn.	3	275	478
Winchester, Tenn.	3	2760	957
Winsted, Tenn.	1		625
Woodland Mills, Tenn.	4	300	362
Yuma, Tenn.	2	200	481

§-No time table listing. ƒ-Interline tickets on sale.







WE REGRET that the American Railroads do not always provide the accommodations and give the "on-time" performance to which you have been so long accustomed. While we know that, in a general way, you are familiar with the difficulties of handling war traffic, the following may be of interest:

One-half of all Pullman sleeping cars, and better than one-third of all coaches are continuously engaged in moving troops, and our armed forces have first call on all the rest

Passenger traffic on the N. C. & St. L. Ry. is now approximately six hundred percent more than prevailed before Pearl Harbor.

Our dining cars are over-t ed, and essential materials cannot be spared for building new ones.

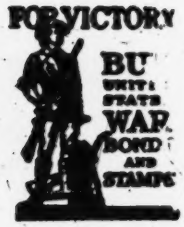
Frequently the movement of scheduled passenger trains must be subordinated to troop trains and to freight trains carrying munitions, war materials, gasoline and fuel oil.

Many experienced employees are serving with the armed forces. It is impossible quickly to train men to replace them, and to fill new positions created to handle increased traffic.

We are trying to do our part in successfully handling the biggest transportation job in the history of the world. We believe our friends will graciously accept the inconveniences caused by things beyond our control. After all, they are small compared with the sacrifices of our Soldiers, Sailors and Marines on the far-flung battle fronts in this war for freedom.

N.C.&St.L.

TO AND FROM
Dixieland





PRINTED IN U. S. A.
AMBROSE PRINT-NASHVILLE

TENNESSEE CENTRAL RAILWAY CO.

Passenger Department

TARIFF CIRCULAR PD-281

Local Tariff

of

CHAIR-COACH SEAT FARES

Between

All Stations

Nashville-Harriman

Issued May 6, 1941

Effective May 15, 1941

Issued By
H. W. Stanley, Jr.—G. P. A.
Nashville, Tenn.

RULES AND REGULATIONS

(1) Individual chair seat fare authorized by this tariff applies for one way trip between any two stations between Nashville and Harriman, inclusive.

(2) All classes of tickets, also passes, will be honored in Chair Coaches upon payment of seat charge.

(3) Train Conductors will collect seat fare, issuing Chair Seat ticket Form CX, reporting sale thereof to Auditor on regular ticket report.

(4) Seat fare authorized will apply in Chair Coaches operated as regular equipment on regular trains, or on special trains if such cars are requested by passengers.

Chair Coach Fares

(5)

Seat

Charge for an individual chair seat between any two stations Nashville to Harriman, inclusive, will be twenty-four (24) cents.

Compartment

Charge for compartment A in Chair Coaches will be 72 cents (3 seat fares).

END

THE NASHVILLE, CHATTANOOGA & ST. LOUIS RY.

Passenger Traffic Department

LOCAL TARIFF

OF

CAFE-COACH SEAT

FARES

BETWEEN

MEMPHIS, TENN.

NASHVILLE, TENN.

AND

INTERMEDIATE POINTS

CIRCULAR R-5030

Issued July 18, 1934

Effective August 1, 1934

ISSUED BY:
J. F. GAFFNEY, JR.,
GENERAL PASSENGER AGENT,
UNION STATION, 1021 BROADWAY,
NASHVILLE, TENNESSEE

Jw

CAFE-COACH SEAT FARES

BETWEEN	Nashville	Dickson	Tennessee City	Waverly	Johnsonville	Camden	Bruceton	Wildersville	Lexington	Luray	Jackson	Denmark	Mercer	Whiteville	Somerville	Memphis
	¢	¢	¢	¢	¢	¢	¢	¢	¢	¢	¢	¢	¢	¢	¢	¢
Nashville	..	25	25	30	35	40	45	45	50	50	55	60	65	70	70	75
Dickson	25	..	25	25	30	35	40	40	45	45	50	55	60	65	65	70
Tennessee City	25	25	..	25	25	30	35	35	40	40	45	50	55	60	60	70
Waverly	30	25	25	..	25	25	30	30	35	35	40	45	50	55	55	65
Johnsonville	35	30	25	25	..	25	25	25	30	30	35	40	45	50	55	65
Camden	40	35	30	25	25	..	25	25	25	30	30	35	40	45	50	60
Bruceton	45	40	35	30	25	25	..	25	25	25	30	35	35	40	50	60
Wildersville	45	40	35	30	25	25	25	..	25	25	25	30	30	40	45	55
Lexington	50	45	40	35	30	25	25	25	..	25	25	25	30	35	40	50
Luray	50	45	40	35	30	30	25	25	25	..	25	25	25	30	35	45
Jackson	55	50	45	40	35	30	30	25	25	25	..	25	25	25	30	40
Denmark	60	55	50	45	40	35	35	30	25	25	25	..	25	25	30	35
Mercer	65	60	55	50	45	40	35	30	30	25	25	25	..	25	25	35
Whiteville	70	65	60	55	50	45	40	40	35	30	25	25	25	..	25	30
Somerville	70	65	60	55	55	50	50	45	40	35	30	30	25	25	..	25
Memphis	75	70	70	65	65	60	60	55	50	45	40	35	35	30	25	..

INSTRUCTIONS

Seat Fares

Seat fares will be collected by agents and conductors from all persons holding passage tickets or passes, as shown on page 2, and also as shown below.

(a) **From a point shown to a point not shown.** Seat fare from a point shown to a point not shown will be the same as fare to first point shown beyond destination in direction traveled.

(b) **From a point not shown to a point shown.** Seat fare from a point not shown to a point shown will be the same as fare from first point shown in opposite direction than that traveled from starting point to destination.

(c) **From a point not shown to a point not shown.** Seat fare from a point not shown to a point not shown will be the same as fare shown from first station in opposite direction than that traveled, to first point to which fare is shown beyond destination.

FARES FOR CHILDREN

No seat fare will be charged for a child under five (5) years of age if accompanied by an adult, but children must not be permitted to use the chairs when paying passengers desire them unless full seat fare is paid for them. Children over five (5) years of age must pay full seat fare.

SALE AND RESERVATION

Sale and reservation of Cafe-Coach seats must be governed by diagram. Agents having assignments will sell Cafe-Coach tickets Form Cafe-Coach-1, and make reservations for seats assigned them; will mark diagram accordingly, and will furnish it to conductor. In selling Cafe-Coach tickets, mark seat number on ticket and number of ticket on diagram opposite seat number. Be careful to issue Cafe-Coach ticket to station where passenger will leave Cafe-Coach (and not to a farther station), as it is necessary for proper record and to avoid misleading passenger to ride beyond destination or junction. In reserving seats without sale of tickets, if on request from another station, write name of station opposite seat number on diagram, but if for passenger from your station write name of passenger, and when ticket is purchased, enter the number of ticket on diagram.

Agents not having assignments must not sell Cafe-Coach tickets unless they secure seats by letter or wire, and will then write number of seat on ticket, and in all other cases will advise passenger to apply on train for seats.

Conductors may sell any available assignment space in car, being careful to get diagram of unsold seats from stations having regular assignments before selling any such seats beyond such station.

Conductors will see that Cafe-Coach passengers hold Cafe-Coach tickets or seat checks good as far as they ride in car, and if not so provided, will collect seat fare and issue Cafe-Coach-2 receipt to passenger for the amount, writing thereon seat number and indicating by punch stations from and to which issued; and the stations on the auditor's stub also. One check must not be issued for two seats nor any train fare. In absence of Cafe-Coach seat check, cash fare slip should be similarly issued, but must be endorsed "Cafe-Coach" on back.

Through Collection of cash seat fares and issue of Cafe-Coach receipt Form 2 will be made as far as passenger is going in Cafe-Coach.

Conductors will cancel Cafe-Coach ticket with punch; if within the run of conductor, will lift the same as if passage ticket. If a Cafe-Coach ticket is destined to a point beyond the run of conductor the passenger should retain same until called for by next succeeding conductor, who will handle it as passage ticket.

Conductors will see that passengers are provided with Cafe-Coach seat tickets, but will be careful not to permit passengers to ride beyond the destination of the seat ticket without further payment and the issuance of another check; and will be particular to take up all transportation and Cafe-Coach tickets before holders reach destination, and return them with diagram to Auditor of Receipts, Nashville, Tenn., with ticket collections.

The Diagram must be filled in showing the numbers of Cafe-Coach-1 sold by Ticket Agents, also Cafe-Coach-2 issued by Train Conductors.

END

EXCERPTS

FROM THE 1942 ANNUAL REPORT OF THE PRESIDENT OF
THE SOUTHERN RAILWAY COMPANY
TO THE STOCKHOLDERS,

Maintenance

The property, though phenomenally busy in 1942, was kept in good physical condition throughout the year. It was safely maintained despite shortages of labor and vital materials.

Maintenance of Equipment expenses, likewise on a higher labor and material basis than in the previous year (with accruals for Depreciation and Amortization of Defense Projects aggregating $7,216,267), amounted to $30,869,516, and increase of 26.34% over 1941. At the year's end, after 1,213 units of motive power had received classified repairs, as compared with 975 units in 1941, and after consistent efforts to maintain freight cars in serviceable condition had been followed throughout the year, the percentage of bad order engines to total ownership was only 7.41%, and of bad order freight cars only 1.74%, the lowest in the Company's half century of service.

Net Income

With a somewhat larger non-operating income than in 1941, and with smaller fixed charges, there was after charges a Net Income of $33,388,868 for the year 1942. These earnings constituted an increase of $14,018,974 over Net Income for 1941, and of $9,792,146 over 1926, the previous high year since the Company's organization. Fixed charges were covered 3.13 times and, after deducting dividends on the preferred stock, earnings amounted to $23.41 per share of common stock.

Dividends

Dividends of 5% on the Preferred Stock were declared out of 1942 earnings, paid and payable as follows: November 2, 1942, $1.25 per share, and three payments of $1.25 per share each on March 15, June 15, and September 15, 1943, the four dividends together requiring an aggregate payment from the treasury of $3,000,000.

Out of the balance of 1942 earnings a dividend of $2.00 per share was declared on February 23, 1943, on the 1,298,200 shares of the Common Stock of the Company without par value, payable April 1, 1943.

The dividends thus payable on the Preferred Stock and Common Stock will consume $5,596,400 of the $33,388,868 remaining after charges.

These were the first dividends on either class of stock since 1931.

EXCERPTS

FROM THE 1942 ANNUAL REPORT OF THE PRESIDENT OF THE LOUISVILLE AND NASHVILLE RAILROAD COMPANY TO THE STOCKHOLDERS.

Wartime conditions produced for the Company new records of traffic and gross earnings in 1942.

The expense of operation, while surpassing other years, did not increase proportionately with earnings, and the operating ratio—58.7% was lower than any theretofore recorded.

Passenger Revenue

The streamline coach trains, the Dixie Flagler and The South Wind, referred to in previous reports, continue popular. Their particular appeal to patrons is economy in travel costs, fast schedules, high type coach conveniences and provision for seat reservation.

Two seasonal trains, the Jacksonian and the Dixieland, each operated on every third-day departure between Chicago, Ill., and Miami, Fla., were placed in service December 17th and 18th, respectively, to handle traffic which cannot be satisfactory accommodated on the year-round trains.

Competition

The shortage of rubber, rationing of gasoline, and the limited supply of new busses, trucks and automobiles, has caused some traffic to be diverted to the rails.

Roadway and Structures

Maintenance of Way and Structures, amounting to $14,411,426, increased $2,692,292, or 23%. This compares favorably with an increase of 18.7% in gross ton miles and 29.0% in passenger car miles. Roadway maintenance absorbed 8.5% of gross revenues.

Although difficulty was experienced in obtaining certain critical materials, and in maintaining a stabilized labor force, the general condition of the roadway property as a whole compares favorably with the previous year.

Equipment

Maintenance of Equipment, amounting to $28,019,504, increased $4,661,211, or 20%. This compares favorably with an increase of 18.4% in locomotive miles and 16.1% in car miles.

Notwithstanding intensive use, the equipment was currently maintained. At the end of the year, the number of freight cars awaiting repairs was 1.5% of ownership—the same as at the end of 1941. The number of locomotives awaiting classified repairs was reduced from 62 at the end of 1941 to 42 at the end of 1942, or from 6.9% to 4.5% of ownership.

The ratio of mechanical expenses to gross revenues—16.6%—was lower than any previous year.

EXCERPTS

FROM THE 1942 ANNUAL REPORT OF THE PRESIDENT OF
THE ILLINOIS CENTRAL SYSTEM
TO THE STOCKHOLDERS

Your Company applied for and has been authorized to amortize over a period of five years, the cost of fifty-one emergency facilities aggregating $16,142,113.34. Of this amount $2,957,391.47, applicable to the year 1942, was included in Operating Expenses and $1,519,308.36, applicable to prior years, was charged to Delayed Income Debits.

Summary of Funded Debt Transactions During The Year

Your Company has been emphasizing debt reduction as an important part of its financial policy in this period of unusual earnings. During 1942 funded debt was reduced by the total amount of $26,208,340. This sum is equivalent to 7.11 percent of debt outstanding at December 31, 1941. The Interstate Commerce Commission recently published figures on railroad debt reduction for 1942, compiled from the reports of 35 Class I carriers. This publication shows that the Illinois Central Railroad Company stands second highest in the dollar amount of debt retired and in third place in the percentage of debt retired as related to total debt outstanding December 31, 1941. (Details of this Company's debt reduction will be found on page 7).

EXCERPTS

FROM THE 1942 ANNUAL REPORT OF THE PRESIDENT OF THE NASHVILLE, CHATTANOOGA AND ST. LOUIS RAILWAY TO THE STOCKHOLDERS.

Most capital expenditures were made for rolling stock and roadway projects solely or primarily on account of the war. The Company, as others, is permitted to charge such expenditures to Operating Expenses over a period of five years at the rate of 20% per annum, instead of previous depreciation rates. Therefore, Operating Expenses for the year include amortization charges for Maintenance of Way $57,889.55 and Maintenance of Equipment $475,789.54.

The percentage of Operating Revenues, consumed by Operating Expenses, dropped from 71.8% in 1941 to 63.6% in 1942, notwithstanding the fact that payroll increases, effective September 1, 1941, approximated $2,000,000.00 for the year.

The Net Corporate Income for 1942 was $4,319,615.09, whereas in 1941 it was $1,888,516.83, an increase of $2,431,098.26, or 128.73%.

Gross Ton Miles, including cars, contents, cabooses and locomotives increased over 1941 by 34.88%, while Train Miles, including Freight, Passenger and Mixed, increased 21.40%. By reason of this abnormal use of track and rolling stock it was necessary to materially increase repairs in order to maintain the physical properties in normal and proper operating condition. Notwithstanding the difficulty of securing the necessary labor and materials this has been pretty well accomplished.

MAIN LINE passenger traffic showed a tremendous increase over such traffic in recent years. Passenger equipment, including dining cars, was taxed to capacity, and while the Company could not maintain its usual high standard of service, there was no failure to move the traffic with reasonable dispatch.

Further extensive work has been conducted in connection with the location of military projects. Other projects, in connection with which definite decisions have not been reached, are receiving attention. On the whole, it is quite clear that all N. C. & St. L. expenditures made because of war construction have been amply justified. In this respect it is not permissible to give details, interesting though they are.

Exhibit No. 11, Page No. 20
I. C. C. Docket No. 29037
Witness Hendley

COMPARISON

Expense of Maintenance of Way and Structures

Road	Year 1941	Year 1942	%1942 over 1941	9 months 1943	% 9 Mo. 1943 Over 1941	% 9 Mo. 1943 Over 1942
C. N. O. & T. P. Ry.	$ 1,838,605	$ 2,409,691	31.06	$ 2,331,900	26.83	.....
Southern Ry.	13,985,805	19,662,842	40.59	18,396,974	31.54	.....
L. & N. R. R.	11,719,134	14,411,426	22.97	14,448,322	23.29	0.26
I. C. R. R.	13,641,562	25,161,844	84.45	23,955,079	75.60	.....
G. M. & O. R. R.	3,377,493	4,509,984	33.53	4,274,901	26.57	.....
Tenn. Central Ry.	512,939	845,804	64.89	705,526	37.55	.....
Clinchfield R. R.	559,696	665,992	18.99	855,046	52.77	28.39
N. C. & St. L. Ry.	1,951,830	2,954,754	51.38	3,723,771	90.78	26.03
	$47,587,064	$70,622,337	48.41	$68,691,519	44.35	.....

AUTHORITY: Monthly report of Revenues and Expenses, filed with Interstate Commerce Commission.

Exhibit No. 11, Page No. 21
I. C. C. Docket No. 29037
Witness Hendley

COMPARISON
of
AMORTIZATION OF DEFENSE PROJECTS

Charged to expense of Operation

Road	1941	1942	9 mo. 1943
C. N. O. & T. P. Ry.	$ 243,553.00	$ 537,565.00	$ 502,195.00
Southern Ry.	1,648,770.00	3,514,559.00	3,098,032.00
L. & N. R. R.	.....	3,299,738.00	3,303,012.00
I. C. R. R.	207,669.00	2,931,648.00	2,657,011.00
G. M. & O. R. R.	.....	314,652.00	477,490.00
Tenn. Central Ry.	.....	2,538.00	12,176.00
Clinchfield R. R.	.....	8,979.00	259,581.00
N. C. & St. L. Ry.	.....	533,679.00	689,606.00
Total	$ 2,099,992.00	$11,143,378.00	$10,998,803.00

Expenses for rolling stock and roadway projects solely or primarily on account of war are charged to operating expenses over a period of five years at the rate of 20% per annum instead of previous depreciation rates.

AUTHORITY: Monthly Reports of Revenue and Expenses filed with Interstate Commerce Commission.

COMPARISON

of

Ratios of Expenses, Maintenance and Transportation

to

Revenues

Road	1941			1942			9 months 1943		
	Expenses	Maintenance	Transportation	Expenses	Maintenance	Transportation	Expenses	Maintenance	Transportation
C. N. O. & T. P.	57.8	29.0	24.2	53.1	26.0	23.0	52.5	26.1	22.4
Southern Ry.	63.3	27.5	31.1	55.6	24.7	26.8	52.5	24.3	24.4
L. & N. R. R.	65.3	29.3	31.2	58.7	25.1	29.2	55.9	24.3	27.5
I. C. R. R.	72.7	32.8	34.2	68.2	34.3	29.2	65.9	33.3	28.2
G. M. & O. R. R.	68.2	30.0	28.9	62.3	28.6	26.9	61.4	29.6	25.6
Tenn. Central Ry.	74.4	33.4	33.8	74.7	36.1	32.5	66.4	32.5	28.1
Clinchfield R. R.	41.6	19.0	18.4	41.9	18.6	19.4	47.2	23.6	19.5
N. C. & St. L. Ry.	71.8	26.5	37.4	63.6	26.1	31.6	63.2	28.5	29.3

AUTHORITY Monthly Reports of Revenues and Expenses filed with Interstate Commerce Commission.

COMPARISON OF N. C. & ST. L. RY. PASSENGER REVENUE, AND Ratios of Total Expenses to Total Revenues

Year	Passenger Revenues	Ratio Total Expenses to Total Revenues	Year	Passenger Revenues	Ratio Total Expenses to Total Revenues
1909	$ 2,476,679	----	1926	$ 4,503,571	79.1
1910	2,568,305	----	1927	3,849,645	79.8
1911	2,827,755	----	1928	3,335,146	77.7
1912	2,946,753	----	1929	2,909,440	75.0
1913	3,101,779	----	1930	2,095,942	84.6
1914	3,071,445	----	1931	1,419,860	89.7
1915	2,517,075	----	1932	919,629	89.4
1916	2,876,076	----	1933	763,815	87.2
1917	3,558,400	----	1934	884,604	86.8
1918	5,978,979	----	1935	951,446	90.4
1919	5,381,541	----	1936	1,116,144	85.4
1920	4,725,018	----	1937	1,207,133	87.5
1921	5,115,363	93.7	1938	1,050,783	80.1
1922	4,678,038	85.9	1939	1,078,102	78.6
1923	5,060,565	86.3	1940	1,163,813	77.7
1924	4,815,185	82.5	1941	1,706,194	71.8
1925	4,834,798	79.9	1942	4,654,316	63.6
		9 Months	1943	6,447,849	63.2

Year	Passenger Revenues	Ratio	Distribution Revenues Expenses	Net Ry. Oper. Income
1921	$5,115,363	93.7	$4,793,095	$ 322,268
1929	2,909,440	75.0	2,182,080	727,360
1941	1,706,194	71.8	1,225,047	481,147
1942	4,654,316	63.6	2,960,145	1,694,171
#1943	6,447,849	63.2	4,075,041	2,372,808

#9 Months.

AUTHORITY: Monthly Report of Revenues and Expenses, filed with I. C. C. Poor's Manual.

Exhibit No. 11, Page No. 24
I. C. C. Docket No. 29037
Witness Hendley

COMPARISON OF NET RAILWAY OPERATING INCOME

Year	Tennessee Central Railway	N. C. & St. L. Railway	Southern Ry. Company
1920	$.....	$D 15.677	$15,325,802
1921	D321,395	1,071,618	13,971,783
1922	99,868	3,094,209	20,472,778
1923	366,926	3,061,971	28,128,137
1924	429,184	3,433,767	30,442,720
1925	430,168	3,937,805	35,086,021
1926	328,903	4,018,155	35,528,783
1927	312,433	3,841,261	32,765,062
1928	392,711	4,232,896	30,842,555
1929	495,773	4,845,801	30,030,977
1930	408,560	2,112,288	19,708,163
1931	258,588	822,215	8,281,106
1932	211,984	715,254	4,406,269
1933	266,299	992,602	15.015,944
1934	335,407	953,544	12,665,358
1935	410,331	523,010	14,290,530
1936	471,851	1,382,842	19,298,273
1937	334,451	840,290	15,112,246
1938	243,256	1,481,936	14,343,565
1939	298,841	1,982,653	20,631,130
1940	310,615	2,069,426	21,457,294
1941	402,350	3,309,419	32,789,981
1942	489,323	5,702,913	46,265,818
9 months 1942	340,489	3,634,437	28,519,306
9 months 1943	661,980	3,644,072	27,333,107

D–Deficit.

AUTHORITY: Monthly Reports Revenues and Expenses filed with I. C. C.

Exhibit No. 11, Page No. 25
I. C. C. Docket No. 29037
Witness Hendley

COMPARISON SHOWING PERCENTAGE OF MILEAGE IN TENNESSEE

Road	Total mileage	Tenn. mileage	Percent in Tenn.
C. N. O. & T. P. Ry.....	337.00	136.75	40.58
Southern Ry.....	6,514.00	650.71	9.99
L. & N. R. R.....	4,745.00	862.76	18.18
I. C. R. R.....	4,827.00	274.58	5.69
Tenn. Central Ry.....	192.51	192.51	100.00
N. C. & St. L. Ry.....	1,090.00	784.08	71.93

AUTHORITY: Returns made by carriers to Railroad and Public Utilities Commission of the State of Tennessee.

Exhibit No. 11, Page No. 26
I. C. C. Docket No. 29037
Witness Hendley

COMPARISON

of

PASSENGER TRAIN REVENUES AND EXPENSES

of the

THE NASHVILLE, CHATTANOOGA AND ST. LOUIS RAILWAY

	1941	1942
Revenues		
Passenger	$ 1,706,194	$ 4,654,316
Mail	710,843	764,465
Express	370,182	511,990
Miscellaneous	49,054	72,344
Total Train Service	2,836,273	6,003,105
Incidental	73,217	43,597
Total Passenger Service	2,909,490	6,046,702
Expenses		
Operating	3,282,897	4,236,580
Taxes	254,765	1,087,832
Operating Income	D 628,172	722,290
Rent Income		
Equipment	D 112,102	66,065
Joint Facility	55,182	52,857
Net Railway Operating Income	D 675,092	709,082

D–Deficit.

AUTHORITY: Hopkins Supplement to Exhibit No. 5, filed June 2, 1943, Tennessee Commission Docket No. 2535.

Total Railway Tax Accruals:

1941—$1,885,540. 1942—$5,047,943.

Percent of Increase—172.05

Railway Tax Accruals charged to Passenger

1941—$254,765. 1942—$1,087,832.

Percent of Increase—326.99

AUTHORITY: Monthly Report of Revenues Y Expenses filed with I. C. C.

PAGE No. 1

of

Louisville and Nashville Railroad Co.

November 14, 1943—Time Table

Who Has A Better Right To These Seats.

We are all agreed as to the answer. The plain facts are that if civilians occupy all the seats in the train, then our soldiers and sailors can't have them. Available equipment is over-crowded and no new equipment can be purchased at this time.

Many service men after going through rigorous training are given short leaves or furloughs, and naturally they want to arrive home relaxed and refreshed, to get the most out of their visit. They can't if they are forced to stand during all, or a part, of their journey.

We know you'll agree they should have first call on anything we can do for them.

They'll be grateful, therefore, if you will refrain from riding the trains unless your trip is essential.

**EXCERPTS FROM SOUTHERN PASSENGER ASSOCIATION
LOCAL AND JOINT PASSENGER TARIFF
TARIFF No. 1226**

Round-trip furlough coach-class excursion fares (also open gap furlough fares as authorized herein) (On exhibition of officially executed furlough, leave of absence or pass papers by furloughees in uniform).

Conditions of sale: (Round-Trip Tickets):

Round-trip coach-class excursion tickets may be sold at fares authorized in Rule 19 to the male and female personnel of the United States Army, Navy, Marine Corps and Coast Guard, when in uniform, for use only when traveling in uniform of the United States Army, Navy, Marine Corps or Coast Guard, at their own expense, when on official leave, furlough or pass, also for personnel of the military forces of the United Kingdom of Great Britain and Northern Ireland, the Union of Soviet Socialist Republics, China, Australia, Belgium, Canada, Costa Rica, Czechoslovakia, Dominican Republic, El Salvador, Greece, Guatemala, Haiti, Honduras, India, Luxembourg, the Netherlands, New Zealand, Niacaragua, Norway, Panama, Poland, the Union of South Africa, Yugoslavia, Mexico, the Philippine Commonwealth, Brazil, and the Fighting French, traveling in uniform of the various branches of their military forces at their own expense when on official leave, furlough or pass; this includes Cadets, Midshipmen and Nurses of all of the above mentioned service units. Upon request of ticket agent at time of purchase furloughee must exhibit to ticket agent officially executed furlough, leave of absence or other pass papers.

Tickets sold at fares authorized herein will not be honored on the following limited trains as indicated:

Illinois Central System....Trains Nos. 52 and 53 (City of Miami)
Nos. 54 & 55 (Panama Limited).

Louis. & Nashville R. R...Trains Nos. 11 and 12 (Dixie Flagler).
Nos. 15 & 16 (South Wind).
Nos. 9 & 10 (The Florida Arrow).
Nos. 88 & 89 (The Dixiana).

N. C. & St. L. Ry.....Trains Nos. 11 & 12 (Dixie Flagler).
Nos. 88 & 89 (The Dixiana).

Southern Railway.....Trains Nos. 47 & 48 (The Southerner).

For computing round-trip coach excursion fares on basis of twenty-five-thirty thirds (25/33) of the one-way first-class fares in effect on date of sale, adding sufficient where necessary to make round-trip fare end in "0" or "5."

(Authority: M. B. Duggan, Agent, I. C. C. No. H-4405.)

EXCURSION—(L. excursio (-Onis) a running out or forth, from excursus, pp. of excurrere, to run out; ex, out, and currere, to run.)

1. Progression beyond fixed limits; as the excursions of the seasons into the extremes of heat and cold.

2. Digression; a wandering from a subject or main design.

3. A jaunt or trip; specifically a short journey undertaken for a special purpose, as for pleasure, and with the intention of returning soon; as, an excursion on the lake or to a convention.

4. A company of people traveling together, as for a pleasure trip; an expedition; as, the excursion was late in arriving.

5. In mechanics, reciprocation; stroke.

6. In physics, the average oscillation or vibratory movement of a body, whether real, as that of the tongue of a reed, or apparent, as that of a planet.

AUTHORITY: Webster's Twentieth-Century Dictionary.

EXCERPT FROM

Order in Ex Parte No. 148,

Decided Apr. 6, 1943, which was approved by Commissioner Eastman in his concurring opinion

Governmental authorities, particularly the Office of Defense Transportation, have urged the public not to travel except when the journey is related to the war effort or is for an essential purpose. A reduction in the standard passenger fares would tend to encourage travel which is unnecessary and unrelated to the prosecution of the war. With passenger facilities taxed to their capacity, any substantial increase in such unnecessary travel inevitably would hasten the rationing of passenger travel.

Exhibit No. 11 Page 31
I.C.C. Docket No. 29037.
Witness--Hendley.

ASSOCIATION OF AMERICAN RAILROADS
BUREAU OF RAILWAY ECONOMICS
WASHINGTON, D. C.

AUGUST 1943

MO. REPT. SER. NO. 408

RAILWAY REVENUES AND EXPENSES

RAILROADS OF CLASS I IN THE UNITED STATES

(Excluding Switching and Terminal Companies)

Account	For the month of August				For the 8 months ended August 31			
	1943	1942	Increase 1943 over 1942		1943	1942	Increase 1943 over 1942	
			Amount	Per cent			Amount	Per cent
Total operating revenues	800 232 733	683 808 778	116 425 955	17.0	5 938 086 247	4 629 747 345	1 308 338 902	28.3
Freight	585 643 662	537 411 800	48 231 862	9.0	4 476 002 740	3 743 659 405	730 343 335	19.5
Passenger	161 971 338	103 463 192	58 508 146	56.5	1 067 786 536	587 681 025	480 105 491	81.7
Mail	9 965 049	8 742 476	1 222 573	14.0	78 395 653	69 897 852	8 497 801	12.2
Express	10 421 341	7 684 026	2 737 315	35.6	82 474 932	55 139 898	27 335 034	49.5
All other	32 231 343	26 505 284	5 726 059	21.6	235 426 406	173 349 165	62 077 241	35.8
Total operating expenses	467 287 517	399 292 303	67 995 234	17.0	3 564 504 912	2 947 031 691	617 473 221	21.0
Maint.of way & struct.	96 883 797	77 248 454	19 635 343	25.4	679 500 346	500 722 600	178 777 746	35.7
Maint.of equipment	117 100 858	102 782 140	14 318 718	13.9	908 951 360	785 981 981	122 969 379	15.6
Traffic	10 356 168	9 529 713	826 455	8.7	82 466 144	77 485 726	4 980 418	6.4
Transportation	219 299 873	189 828 909	29 470 964	15.5	1 708 997 181	1 434 534 054	274 463 127	19.1
General	14 550 967	12 936 684	1 614 283	12.5	116 779 916	103 293 386	13 486 530	13.1
All other	9 095 854	6 966 403	2 129 451	30.6	67 809 965	45 013 944	22 796 021	50.6
Net operating revenue	332 945 216	284 514 475	48 430 741	17.0	2 373 581 335	1 682 715 654	690 865 681	41.1
Taxes	191 720 660	132 228 756	59 491 904	45.0	1 296 615 752	745 726 990	550 888 762	73.9
Payroll taxes	17 477 520	14 888 659	2 588 861	17.4	132 052 731	110 618 428	21 434 303	19.4
Federal income taxes	147 336 195	94 422 476	52 913 719	56.0	959 156 225	460 902 123	498 254 102	108.1
All other taxes	26 906 945	22 917 621	3 989 324	17.4	205 406 796	174 206 439	31 200 357	17.9
Operating income	141 224 556	152 285 719	d 11 061 163	d 7.3	1 076 965 583	936 988 664	139 976 919	14.9
Equipment rents	Dr 13 079 666	Dr 12 955 925	d 123 741	d 1.0	Dr 101 566 075	Dr 90 567 888	d 10 998 187	d 12.1
Joint facility rents	Dr 3 583 400	Dr 3 400 852	d 182 548	d 5.4	Dr 27 315 814	Dr 25 182 768	d 2 133 046	d 8.5
Net railway operating income	124 561 490	135 928 942	d 11 367 452	d 8.4	948 083 694	821 238 008	126 845 686	15.4
Operating ratio - per cent	58.39	58.39	-	-	60.03	63.65	-	-
Average mileage represented	229 300	230 805	d 1 505	d 0.7	229 321	231 225	d 1 904	d 0.8
Amount of depreciation included in maintenance of way and structures and equipment expenses	886 498 548	822 865 506	-	-	8210 521 729	8160 457 537	-	-

d Decrease.

RATE OF RETURN ON PROPERTY INVESTMENT
12 months ended August 31

District	Net Railway Operating Income		Rate of Return	
	1943	1942	1943	1942
Eastern District (Incl.Pocahontas Region)	655 598 545	506 988 560	5.33%	4.12%
Southern District (Excl.Pocahontas Region)	231 408 770	171 408 709	7.01	5.38
Western District	725 240 806	489 512 049	6.57	4.51
United States	1 612 248 121	1 167 909 318	6.06	4.43

Note: "Rate of Return" is computed on the property investment of the carriers as shown by their books, including material and supplies and cash, as of January 1, 1943 and 1942, respectively.

REVENUES, EXPENSES, AND NET RAILWAY OPERATING INCOME
Eight months ended August, 1943 and 1942

Region and Road	Average Miles of Road Operated 1943	Freight Revenue (Accts.101 & 121) 1943	Freight Revenue (Accts.101 & 121) 1942	Passenger Revenue (Accts.102 & 122) 1943	Passenger Revenue (Accts.102 & 122) 1942	Total Operating Revenues 1943	Total Operating Revenues 1942	Total Operating Expenses 1943	Total Operating Expenses 1942	Net Railway Operating Income 1943	Net Railway Operating Income 1942
New England Region	6 600	8130 038 906	8121 323 099	865 523 536	845 530 799	8212 095 800	8180 917 611	6135 099 748	6114 753 887	837 592 214	832 731
Great Lakes Region	25 703	764 125 661	652 499 843	141 065 427	89 772 110	971 285 637	795 722 220	609 430 557	531 728 506	136 844 832	116 156
Central Eastern Region	25 026	844 304 453	768 571 119	286 686 711	166 178 121	1 168 414 227	976 114 510	775 018 084	654 759 826	163 103 917	154 153
TOTAL EASTERN DISTRICT	54 329	1 738 468 038	1 542 393 881	433 275 674	281 481 030	2 352 795 664	1 952 754 341	1 519 548 389	1 301 242 221	335 540 963	301 038
Pocahontas Region	6 021	233 995 185	213 600 482	14 323 643	11 334 741	278 588 863	241 101 630	146 823 546	129 175 583	47 916 312	40 699
Southern Region	31 426	629 183 573	513 675 419	125 726 272	95 296 527	862 158 497	650 452 753	485 583 524	392 186 047	141 681 082	124 426
Northwestern Region	43 444	474 515 151	405 778 797	71 388 226	35 552 105	596 253 075	481 716 524	365 787 507	315 199 806	122 755 405	87 540
Central Western Region	55 324	959 509 737	741 963 503	252 606 047	116 601 109	1 308 536 372	923 122 721	744 888 126	576 255 863	204 248 923	173 747
Southwestern Region	28 779	437 873 896	318 297 723	70 335 577	41 085 111	543 983 374	384 983 370	302 095 800	225 176 171	95 943 002	91 244
TOTAL WESTERN DISTRICT	165 547	2 853 996 764	2 446 860 683	634 462 920	391 908 593	3 645 921 181	2 681 480 918	2 045 178 503	1 637 993 470	600 743 724	517 618
GRAND TOTAL - UNITED STATES	229 327	4 474 002 940	3 743 659 405	1 065 786 516	687 681 025	5 998 086 847	4 629 767 345	3 564 726 912	2 947 031 691	948 083 694	821 230
NEW ENGLAND REGION:											
Bangor & Aroostook	602	4 357 003	3 910 766	626 296	359 124	5 217 627	4 447 339	3 506 300	3 010 706	1 030 632	900
Boston & Maine	1 823	39 547 271	34 695 011	13 358 955	9 192 718	57 812 241	50 267 723	39 503 874	32 280 881	8 595 293	8 994
Canadian Nat.Lines in New Eng.	172	907 700	1 364 400	69 200	42 500	1 165 700	1 527 500	1 553 755	1 459 188	Def 836 846	Def 541
Canadian Pacific (lines in Me.)	234	3 632 903	2 759 822	502 459	428 291	4 306 150	3 337 275	2 383 123	2 003 839	1 497 340	1 085
Canadian Pacific (lines in Vt.)	90	678 934	764 584	106 896	87 180	895 700	947 946	1 220 855	1 096 366	Def 621 738	Def 469
Central Vermont	422	5 015 032	4 544 498	694 000	487 000	6 125 032	5 351 018	4 844 243	3 825 465	963 794	911
Maine Central	991	9 169 837	9 209 170	2 396 813	1 446 627	12 452 880	11 462 868	8 470 784	8 069 618	1 925 927	1 738
New York Connecting	21	1 635 708	1 846 201	-	-	1 801 520	1 958 033	1 075 359	907 038	929 033	1 136
New York,New Haven & Hartford	1 838	63 073 020	58 293 361	47 491 478	33 142 308	119 308 638	98 767 777	70 227 386	59 803 038	23 840 771	18 499
Rutland	407	2 007 506	2 003 286	478 344	325 051	3 010 312	2 810 146	2 696 069	2 299 488	188 008	349
GREAT LAKES REGION:											
Ann Arbor	294	3 785 586	3 382 178	80 218	30 106	3 978 333	3 432 464	2 804 222	2 592 945	569 659	319
Cambria & Indiana	35	1 238 016	1 412 746	-	-	1 238 538	1 433 296	688 891	762 866	303 857	553
Delaware & Hudson	848	29 894 410	28 248 799	1 383 072	995 350	32 109 969	29 974 829	21 969 639	19 530 965	6 139 921	5 833
Delaware,Lackawanna & Western	978	42 297 377	36 899 558	7 621 735	5 847 803	54 815 446	47 151 666	35 400 425	31 671 621	8 844 672	7 125
Detroit & Toledo Shore Line	50	2 835 545	2 797 982	-	-	2 846 538	2 766 846	2 326 508	2 330 693	560 784	498
Erie	2 242	91 272 926	76 856 057	7 101 091	4 681 790	104 412 199	86 672 909	63 082 718	55 851 200	13 747 118	15 361
Grand Trunk Western	1 026	19 682 000	17 255 000	2 349 000	1 973 000	23 436 000	19 550 000	16 458 493	14 647 238	4 472 399	3 181
Lehigh & Hudson River	96	2 079 243	2 291 572	2 982	25 670	2 089 565	2 332 207	1 238 283	1 211 853	208 838	283
Lehigh & New England	190	4 100 078	4 081 501	-	-	4 128 843	4 107 279	2 601 213	2 500 186	914 978	986
Lehigh Valley	1 260	51 889 627	43 728 797	4 688 812	2 295 708	60 367 457	48 724 355	40 017 048	32 260 295	8 693 550	7 434
Monongahela	172	4 435 441	4 704 689	14 034	6 198	4 468 119	4 728 210	1 963 996	1 936 430	900 346	1 044
Montour	51	1 903 607	1 788 608	-	-	1 917 429	1 770 541	1 147 293	1 058 249	542 158	501
New York Central	10 797	322 774 687	273 188 158	104 569 969	67 760 671	468 567 904	373 706 092	295 808 255	258 678 871	62 437 486	48 411
New York,Chicago & St.Louis	1 688	63 089 333	51 715 115	2 017 108	1 278 138	66 262 717	55 550 991	34 847 046	30 150 946	9 185 975	6 132
New York,Ontario & Western	546	4 704 325	4 115 108	694 251	433 109	5 853 602	5 101 914	5 015 464	4 291 675	307 570	383
New York,Susquehanna & Western	120	3 438 181	2 328 260	314 746	278 773	3 942 049	2 741 617	2 111 924	1 588 932	735 417	387
Pere Marquette	2 019	32 362 197	25 112 616	2 500 779	1 293 539	36 561 775	27 723 956	24 621 447	20 821 906	4 536 933	3 667
Pittsburgh & Lake Erie	232	21 996 412	21 254 005	888 119	556 070	23 594 433	22 392 443	16 588 386	15 460 458	4 986 094	4 899
Pittsburg & Shawmut	97	953 073	808 761	-	-	955 550	813 825	659 554	521 803	170 622	261
Pittsburgh & West Virginia	136	5 198 082	4 029 554	96	350	5 330 265	4 170 069	3 344 028	2 751 722	1 241 821	1 180
Pittsburg,Shawmut & Northern	190	973 307	981 940	-	-	988 426	993 747	776 434	825 309	101 154	49
Wabash	2 393	52 765 205	42 907 126	6 708 151	3 386 896	62 764 291	48 935 062	36 132 308	30 429 409	7 799 151	5 898
CENTRAL EASTERN REGION:											
Akron,Canton & Youngstown	171	2 817 365	2 200 713	1 198	661	2 942 547	2 189 496	1 698 055	1 489 258	685 434	388
Baltimore & Ohio	6 150	199 303 147	169 990 682	25 610 470	15 789 998	237 029 148	194 611 683	155 111 716	132 112 593	46 868 557	37 085
Bessemer & Lake Erie	214	12 354 554	14 099 932	15 774	6 850	12 467 864	14 217 356	10 014 663	8 555 054	1 206 415	2 183
Central R.R.of New Jersey	657	34 811 863	31 018 038	5 495 160	4 228 120	42 609 024	37 302 241	30 215 429	25 806 772	4 623 123	5 128
Chicago & Eastern Illinois	932	15 190 125	10 821 175	4 217 432	2 349 952	21 119 441	14 520 927	13 020 200	10 277 260	2 872 041	1 866
Chicago & Illinois Midland	231	3 992 110	3 837 930	10 059	6 419	4 206 121	4 054 859	2 434 277	2 460 245	659 661	531
Chicago,Indpls.& Louisville	541	7 254 825	6 456 621	799 102	450 699	8 641 020	7 431 338	5 469 630	5 096 463	2 239 607	1 432
Detroit,Toledo & Ironton	464	5 752 699	5 238 697	10 288	3 675	6 375 417	5 527 347	3 370 867	3 185 928	1 696 936	1 368
Elgin,Joliet & Eastern	392	18 603 060	19 612 612	201	132	21 697 958	22 170 248	15 762 833	13 835 052	1 161 511	1 864
Illinois Terminal	476	4 421 914	4 275 515	1 397 225	840 009	6 409 108	5 657 179	3 570 298	3 265 438	955 276	1 431
Long Island	378	8 805 413	7 186 625	19 048 281	14 287 552	29 083 430	22 704 375	20 052 883	16 199 970	3 246 426	2 081
Missouri-Illinois	172	2 054 726	2 077 277	4 316	2 [illegible]	2 071 094	2 089 816	1 138 994	1 013 619	274 720	478
Pennsylvania R.R.Co.	10 178	437 071 103	394 255 024	157 349 002	100 514 707	643 249 761	531 581 987	430 260 872	360 998 532	72 363 140	78 983
Penns.-Reading Seashore Lines	397	3 913 527	3 442 292	4 824 141	2 [illegible] 621	9 002 493	6 286 003	5 959 717	4 867 664	1 337 434	Def 192
Reading Company	1 419	66 527 031	52 116 823	6 678 091	4 470 119	76 786 415	56 536 856	50 642 895	42 033 837	12 198 078	11 055
Staten Island Rapid Transit	24	1 748 125	859 241	959 877	672 181	2 777 775	1 604 084	1 516 784	1 148 970	787 222	331
Western Maryland	843	22 487 286	19 056 505	863 956	131 120	23 452 046	19 732 768	14 214 041	12 496 737	5 383 699	4 377
Wheeling & Lake Erie	507	17 307 578	14 923 429	31	15	17 297 167	15 108 003	10 563 910	9 736 434	2 554 627	1 898
POCAHONTAS REGION:											
Chesapeake & Ohio	3 089	117 942 704	106 677 041	13 603 368	6 084 842	136 396 197	116 756 121	71 561 677	62 043 614	24 952 107	20 392
Norfolk & Western	2 156	86 708 051	82 281 227	10 188 982	4 778 880	99 923 389	89 450 436	55 627 320	50 226 559	15 337 150	11 647
Richmond,Fred.& Potomac	118	12 531 280	9 415 496	10 457 686	6 413 111	24 766 470	17 184 511	9 922 955	7 523 490	2 703 262	1 851
Virginian	658	16 813 350	17 026 718	73 657	45 908	17 504 807	17 710 562	9 378 614	8 979 920	4 923 793	5 008

REVENUES, EXPENSES, AND NET RAILWAY OPERATING INCOME
Eight months ended August, 1943 and 1942

Region and Road	Average Miles of Road Operated 1943	Freight Revenue (Accts.101 & 121)		Passenger Revenue (Accts.102 & 122)		Total Operating Revenues		Total Operating Expenses		Net Railway Operating Income	
		1943	1942	1943	1942	1943	1942	1943	1942	1943	1942
EASTERN REGION:											
Alabama Great Southern	315	811 552 767	99 929 772	83 094 865	61 720 986	915 369 449	812 224 099	87 820 954	86 303 952	81 619 417	61 326 665
Atlanta & East Point	93	42 138 123	1 601 030	1 067 811	588 762	3 533 263	2 418 492	1 906 083	1 469 256	335 719	366 374
Atlanta,Birmingham & Coast	639	4 280 119	3 227 447	449 344	269 985	4 928 693	3 696 687	3 255 807	2 776 820	545 827	236 931
Atlantic Coast Line	4 970	71 166 255	51 217 182	28 367 870	14 901 175	105 090 526	70 135 196	52 718 479	40 867 397	42 297 108	13 788 571
Central of Georgia	1 816	17 780 109	11 858 174	3 151 302	2 434 230	24 921 290	17 849 261	14 194 927	12 268 439	6 288 718	4 214 292
Charleston & Western Carolina	343	2 844 421	2 464 479	99 282	72 629	3 002 543	2 588 581	2 091 712	1 552 352	585 354	586 001
Gulf,Mobile & Ohio	337	18 933 797	14 105 973	4 212 323	2 280 448	24 235 575	19 192 033	12 627 516	10 963 888	6 145 893	3 346 599
Illinois Central (Excl.YAHV)	4 745	100 871 056	89 114 473	30 121 320	18 970 635	138 266 653	105 627 895	76 813 275	64 020 833	37 636 765	13 381 974
Louisville & Nashville	4 945	100 871 056	89 114 473	30 121 320	18 970 635	138 266 653	105 627 895	76 813 275	64 020 833	37 636 765	13 381 974
Mississippi Central	158	1 088 748	943 199	46 240	27 424	1 156 646	982 605	724 262	436 368	200 458	232 365
Nashville,Chattanooga & St.Louis	1 090	19 907 229	13 998 973	5 660 931	2 314 932	27 431 597	17 649 937	17 065 732	12 341 271	3 424 462	2 887 784
New Orleans & Northeastern	294	7 480 153	5 905 428	1 679 673	995 724	9 530 988	7 212 023	6 227 013	5 125 291	1 087 459	1 189 894
New Orleans Terminal	7	2 280 887	1 796 283	220 920	134 169	3 471 703	3 087 707	3 934 044	3 334 157	908 514	865 785
Norfolk Southern	711	6 280 887	4 796 283	220 920	134 169	3 471 703	3 087 707	3 934 044	3 334 157	908 514	865 785
Richard Air Line	4 180	40 311 737	41 683 943	24 496 738	15 990 807	92 226 017	67 507 291	50 544 479	41 305 140	23 778 214	19 384 073
Southern Ry.	6 514	114 413 335	99 801 135	38 138 070	20 186 184	161 932 918	126 437 425	83 033 009	73 907 098	23 714 830	23 944 991
Tennessee Central	286	2 551 507	2 366 773	377 088	84 267	3 057 752	2 587 204	1 950 027	1 558 161	460 608	495 746
Western Ry.of Alabama	113	2 160 622	1 816 547	1 111 649	558 115	3 354 636	2 652 241	1 950 027	1 558 161	460 608	532 315
NORTHWESTERN REGION:											
Chicago & North Western	8 100	75 204 008	67 137 401	21 710 478	12 241 582	106 796 546	83 100 568	66 796 414	61 288 681	22 336 374	14 604 170
Chicago Great Western	1 500	16 655 134	14 141 181	1 807 306	861 449	19 795 554	16 028 396	12 142 575	10 603 821	2 436 158	1 679 056
Chicago,Milwaukee,St.Paul & Pac.	10 773	111 906 726	91 196 565	19 786 277	9 621 473	144 249 041	113 420 836	86 581 288	75 262 355	36 544 932	19 146 584
Chicago,St.Paul,Minneapolis & Omaha	1 625	13 662 507	12 230 035	2 601 774	1 571 550	17 448 438	14 773 390	12 525 617	11 445 106	3 077 712	1 620 415
Duluth,Missabe & Iron Range	546	21 851 774	23 947 287	13 331	15 358	25 384 705	27 904 496	13 499 456	9 825 799	5 234 771	4 385 370
Duluth,South Shore & Atlantic	551	2 316 146	2 421 792	215 833	105 215	2 795 647	2 702 451	1 959 206	1 965 392	641 008	539 808
Duluth,Winnipeg & Pacific	175	1 670 000	1 371 700	50 600	9 600	1 737 400	1 408 800	1 251 209	1 044 182	373 322	94 339
Great Northern	8 152	103 847 645	86 104 633	11 207 523	4 804 096	124 933 446	98 519 200	76 496 543	59 754 347	29 029 411	20 169 724
Green Bay & Western	234	1 790 344	1 448 335	4 745	2 900	1 854 661	1 496 162	1 133 292	1 034 411	456 648	224 943
Lake Superior & Ishpeming	136	1 560 775	1 032 419	1 492	533	2 060 357	2 253 357	1 062 012	1 065 718	517 383	559 460
Minneapolis & St.Louis	1 478	8 978 502	7 944 300	352 681	131 126	9 584 317	8 447 490	6 485 527	6 074 214	2 376 379	1 651 845
Minneapolis,St.Paul & S.S.Marie	4 277	26 219 305	23 903 355	1 833 601	908 854	30 186 332	26 520 258	21 522 982	19 651 534	5 500 334	3 931 340
Northern Pacific	6 868	74 246 332	60 528 222	10 638 974	4 786 734	92 407 725	70 699 801	57 682 716	49 422 698	20 037 575	14 768 088
Spokane International	152	1 830 814	863 409	59 322	12 676	1 356 053	937 181	710 550	519 852	210 508	221 813
Spokane,Portland & Seattle Ors.	323	13 332 899	10 904 163	1 329 485	428 809	15 463 863	11 964 136	7 938 210	6 236 291	4 182 900	3 963 217
SOUTHWESTERN REGION:											
Alton R.R.	959	16 985 108	14 179 432	5 510 275	3 363 237	34 944 076	29 352 673	24 441 498	22 640 837	2 910 171	2 774 483
Atchison,Topeka & Santa Fe Sys.	13 153	216 991 598	178 379 640	66 930 527	28 166 459	304 121 546	220 410 892	157 952 348	126 604 221	41 384 352	44 061 972
Chicago,Burlington & Quincy	9 032	107 792 284	79 661 484	19 860 706	10 727 980	139 530 133	99 106 546	75 148 883	62 082 524	31 372 420	17 805 329
Chicago,Rock Island & Pacific	7 759	84 314 961	63 649 031	25 969 508	13 201 359	119 005 544	82 469 445	46 350 647	53 522 925	29 844 912	21 270 276
Colorado & Southern	748	6 132 146	4 316 085	2 125 876	1 016 088	8 999 125	6 434 592	5 510 230	4 115 619	2 054 166	1 422 599
Colorado & Wyoming	42	763 162	765 545	-	-	1 184 911	1 206 196	720 440	682 391	189 765	198 784
Denver & Rio Grande Western	2 405	38 173 347	27 421 200	6 494 834	2 444 288	46 846 233	33 243 139	25 805 484	19 480 443	11 996 165	9 545 937
Denver & Salt Lake	232	1 847 490	1 548 049	10 189	45 090	2 035 322	1 668 207	1 470 488	1 255 637	638 189	605 637
Fort Worth & Denver City	824	5 908 615	4 241 063	3 210 484	1 460 231	9 900 452	6 512 959	4 934 602	3 761 394	2 528 900	2 060 332
Illinois Southern	146	598 124	438 824	5 618	4 568	626 037	470 892	339 615	342 868	93 842	103 574
Missouri-Kansas-Texas Lines	1 159	14 807 562	10 161 427	1 600 437	1 449 095	19 464 356	12 974 728	11 800 344	9 012 637	2 828 269	2 661 426
Missouri Pacific	878	23 956 774	18 116 992	2 925 696	1 392 498	28 551 493	21 068 143	16 312 111	11 821 178	3 918 426	4 342 944
Texas City Southern	108	2 627 884	1 894 407	10 730	5 573	2 865 694	1 921 031	1 389 699	929 972	559 273	446 740
Texas,Oklahoma & Gulf	854	11 590 167	8 423 797	1 027 957	563 776	13 095 926	9 148 561	7 591 451	5 535 215	1 488 636	1 612 066
Louisiana & Arkansas	153	1 199 087	830 963	1 812	66	1 823 228	948 867	707 729	587 031	271 786	175 927
Midland Valley	353	1 199 087	830 963	1 812	66	1 823 228	948 867	707 729	587 031	271 786	175 927
Kansas & Arkansas	340	1 365 949	998 013	39 044	14 534	1 454 477	1 056 550	1 252 372	798 006	19 515	47 009
Missouri-Kansas-Texas Lines	3 393	37 005 005	26 792 828	8 886 652	4 671 960	49 536 511	32 924 851	36 444 082	23 802 944	4 701 704	5 488 611
Missouri Pacific	7 097	114 811 144	89 444 906	22 950 222	10 534 616	149 234 976	107 158 092	79 382 424	63 188 569	27 631 904	31 010 934
Oklahoma City-Ada-Atoka	132	981 807	800 402	1 443	2	1 002 213	811 582	655 001	354 163	208 693	204 505
St.Louis-San Francisco Sys. 2	6 827	92 185 229	72 445 746	18 815 203	7 095 594	72 480 145	53 216 564	44 350 117	35 949 216	14 027 454	11 745 869
St.Louis Southwestern Lines	1 615	18 300 249	13 444 744	3 512 179	1 349 338	41 819 221	29 435 303	28 460 495	23 184 384	7 708 108	5 990 694
Texas & Pacific	1 893	28 542 586	22 414 189	13 349 792	5 757 516	45 806 972	30 627 210	24 261 089	18 554 768	6 145 482	6 611 448
Texas Mexican	162	1 208 875	975 088	7 809	3 117	1 395 985	1 143 715	736 970	704 277	419 347	322 373

a Data shown for the Southern Pacific System include the Texas & New Orleans.
b Data shown for the St.Louis-San Francisco System include the St.Louis,San Francisco & Texas.
c Active operation of the Southern Pacific Steamship Lines ceased with the delivery of ships to the U.S. Government during June and July, 1941.

OPERATING INCOME ACCOUNT - UNITED STATES - EIGHT MONTHS ENDED AUGUST, 1938 TO 1943

Railways of Class I (Excluding Switching and Terminal Companies)

Account	1943	1942	1941	1940	1939	1938
Total operating revenues	$5 938 086 247	$4 629 747 345	$3 403 544 130	$2 744 138 975	$2 480 961 970	$2 250 992 184
Freight	4 474 002 740	3 743 659 405	2 821 742 032	2 249 483 653	1 998 886 311	1 787 444 058
Passenger	1 067 786 516	587 681 025	334 547 925	275 625 317	279 298 133	271 556 581
Mail	78 395 653	69 897 852	68 878 927	64 560 944	63 442 317	61 485 539
Express	82 494 932	55 159 898	37 724 237	34 207 870	34 678 062	28 985 865
All other	235 426 406	173 349 165	140 651 009	120 261 191	108 657 147	101 520 141
Total operating expenses	3 564 504 912	2 947 031 691	2 302 227 120	2 027 486 510	1 890 327 881	1 783 333 872
Maint.of way & struct.	679 500 346	500 722 600	374 604 734	328 169 982	306 362 282	272 193 815
Maint.of equipment	908 951 360	785 981 981	628 226 076	537 031 490	490 458 387	440 481 927
Traffic	82 466 144	77 485 726	73 238 894	72 127 363	70 773 054	68 562 734
Transportation	1 708 997 181	1 434 534 054	1 110 010 707	979 738 638	914 930 649	893 177 997
General	116 779 916	103 293 386	88 733 119	87 367 543	85 418 774	85 676 831
All other	67 809 965	45 013 944	27 413 590	23 061 494	22 384 735	23 040 568
Net operating revenue	2 373 581 335	1 682 715 654	1 101 317 010	716 652 465	590 634 089	467 658 312
Taxes	1 296 615 752	745 726 990	361 228 044	260 265 237	233 340 428	226 096 314
Operating income	1 076 965 583	936 988 664	740 088 966	456 387 228	357 293 661	241 561 998
Equipment rents	Dr 101 566 075	Dr 90 567 888	Dr 66 383 272	Dr 44 462 280	Dr 44 395 690	Dr 43 002 834
Joint facility rents	Dr 27 315 814	Dr 25 182 768	Dr 22 090 296	Dr 22 146 492	Dr 23 710 785	Dr 23 520 618
Net railway operating income	948 083 694	821 238 008	651 615 398	369 778 456	269 187 186	155 038 546
Operating ratio - per cent	60.03	63.65	67.64	73.88	76.19	79.22
Average mileage represented	229 321	231 225	232 278	232 918	233 552	234 627

TOTAL OPERATING REVENUES, EXPENSES, AND NET RAILWAY OPERATING INCOME - UNITED STATES BY MONTHS, 1938 TO 1943

Railways of Class I (Excluding Switching and Terminal Companies)

Month	1943	1942	1941	1940	1939	1938
TOTAL OPERATING REVENUES						
January	$671 334 151	$480 688 115	$377 374 190	$345 639 123	$305 778 767	$279 108 385
February	643 533 786	462 482 830	358 413 499	313 594 852	276 904 334	251 037 015
March	756 250 563	540 300 226	416 319 161	327 131 789	315 091 017	283 017 974
April	748 797 981	572 530 415	375 008 368	321 567 091	282 117 754	268 213 597
May	759 330 727	601 063 798	442 285 876	343 494 649	302 617 948	272 609 400
June	747 364 547	623 687 416	455 022 722	344 952 789	321 616 735	282 080 672
July	791 195 970	645 181 540	485 446 306	366 220 237	332 435 852	299 589 726
August	800 232 733	683 806 778	493 674 008	381 538 438	344 399 562	315 335 418
September		697 792 146	488 978 901	382 714 515	381 117 880	322 542 835
October		745 584 165	537 606 960	413 712 272	419 737 399	353 384 223
November		690 108 128	457 011 853	375 498 853	368 026 739	319 629 288
December		702 995 272	479 560 154	381 936 980	345 180 252	318 281 016
Total - Calendar year a		7 466 227 054	5 346 699 997	4 296 600 653	3 995 004 251	3 565 490 753
TOTAL OPERATING EXPENSES						
January	$424 201 292	$348 738 936	$268 971 743	$257 395 976	$232 946 449	$232 565 356
February	408 459 307	327 603 933	255 590 196	240 579 920	220 619 333	215 353 899
March	449 440 079	360 152 483	283 328 538	248 634 646	240 358 779	229 004 115
April	442 148 617	366 755 760	274 938 371	245 877 517	227 622 288	219 484 312
May	454 361 705	375 447 890	296 590 475	252 854 916	237 411 054	217 054 008
June	451 945 537	378 472 014	298 932 432	252 507 423	241 785 698	218 132 406
July	466 657 986	390 476 947	310 034 946	262 064 921	241 962 092	222 166 822
August	467 287 517	399 292 303	313 843 279	267 571 191	247 621 627	229 572 952
September		399 775 707	312 288 197	260 239 661	251 166 939	231 982 740
October		416 430 354	361 513 715	276 780 299	271 538 049	242 354 484
November		406 389 194	335 614 115	259 517 849	256 170 301	231 293 926
December		431 873 000	352 589 088	266 148 818	249 006 533	232 619 459
Total - Calendar year a		4 601 429 943	3 664 212 230	3 089 417 209	2 918 209 706	2 722 199 007
NET RAILWAY OPERATING INCOME						
January	$105 296 534	$66 850 765	$62 017 440	$46 012 810	$32 947 172	$7 144 036
February	106 132 776	64 345 273	58 135 957	32 856 489	18 637 706	Def 1 909 133
March	129 647 038	90 571 693	80 170 452	37 034 270	34 375 047	14 728 275
April	127 059 362	101 596 294	52 074 739	34 120 523	15 323 766	9 397 133
May	128 169 020	109 667 562	88 104 433	47 408 236	25 172 741	16 665 684
June	109 655 123	118 737 993	93 316 121	48 090 785	39 166 788	25 159 522
July	120 611 205	133 625 235	106 381 904	57 725 166	48 996 611	38 431 251
August	124 561 490	135 928 942	111 611 489	66 530 180	54 567 356	45 421 781
September		154 631 717	104 358 836	74 715 435	86 529 622	50 406 298
October		184 680 008	94 047 046	87 638 354	101 716 356	68 594 769
November		148 948 998	68 933 019	71 560 226	70 414 617	49 692 171
December		170 850 986	79 332 410	78 850 744	60 981 295	49 418 855
Total - Calendar year a		1 480 940 760	998 255 787	682 133 478	588 829 083	372 873 771

a "Total - Calendar year" based on annual reports for years 1938 to 1941 and revised monthly reports for 1942, and do not always agree with the sum of the monthly totals.

Exhibit No. 11 Page 32
I.C.C. Docket No. 29037.
Witness--Henoley.

CIATION OF AMERICAN RAILROADS
BUREAU OF RAILWAY ECONOMICS
WASHINGTON, D. C.

DECEMBER 1941

MO. REPT. SER. NO. 388

RAILWAY REVENUES AND EXPENSES

RAILROADS OF CLASS I IN THE UNITED STATES

(Excluding Switching and Terminal Companies)

Account	For the month of December				For the 12 months ended December 31			
	1941	1940	Increase 1941 over 1940		1941	1940	Increase 1941 over 1940	
			Amount	Per cent			Amount	Per cent
al operating revenues	$479 560 154	$381 936 980	$97 623 174	25.6	$5 346 699 998	$4 298 001 598	$1 048 698 400	24.4
Freight	389 222 726	308 379 952	80 842 774	26.2	4 447 568 333	3 537 440 970	910 127 363	25.7
Passenger	53 868 286	40 840 486	13 027 800	31.9	514 687 031	417 268 962	97 418 069	23.3
Mail	12 179 894	11 303 789	876 105	7.8	108 192 446	101 086 894	7 105 552	7.0
Express	5 775 901	5 880 319	d 104 418	d 1.8	57 281 554	55 642 988	1 638 566	2.9
All other	18 513 347	15 532 434	2 980 913	19.2	218 970 634	186 561 784	32 408 850	17.4
al operating expenses	352 531 871	266 148 818	86 383 053	32.5	3 664 175 018	3 090 173 137	574 001 881	18.6
Maint.of way & struct.	55 884 767	36 429 969	19 454 798	53.4	603 110 965	497 167 786	105 943 179	21.3
Maint.of equipment	93 443 818	70 556 099	22 887 719	32.4	992 511 463	819 103 106	173 408 357	21.2
Traffic	9 804 839	9 151 535	653 304	7.1	111 888 491	107 593 047	4 295 444	4.0
Transportation	176 237 185	136 017 596	40 219 589	29.6	1 774 977 015	1 501 392 805	273 584 210	18.2
General	12 660 223	10 853 320	1 806 903	16.6	138 214 336	130 498 100	7 716 236	5.9
All other	4 501 039	3 140 299	1 360 740	43.3	43 472 748	34 418 293	9 054 455	26.3
operating revenue	127 028 283	115 788 162	11 240 121	9.7	1 682 524 980	1 207 828 461	474 696 519	39.3
Taxes	33 606 369	26 808 850	6 797 519	25.4	546 071 058	396 623 016	149 448 042	37.7
Payroll taxes	13 594 175	9 937 262	3 656 913	36.8	138 029 553	116 376 227	21 653 331	18.6
All other taxes	20 012 194	16 871 588	3 140 606	18.6	408 041 505	280 246 794	127 794 711	45.6
rating income	93 421 914	88 979 312	4 442 602	5.0	1 136 453 922	811 205 445	325 248 477	40.1
Equipment rents	Dr 8 902 561	Dr 7 562 948	d 1 339 613	d 17.7	Dr 102 176 729	Dr 95 735 682	d 6 441 047	d 6.7
Joint facility rents	Dr 9 970 746	Dr 2 565 620	d 1 405 126	d 54.8	Dr 34 774 287	Dr 32 926 545	d 1 847 742	d 5.6
railway operating income	80 548 607	78 850 744	1 697 863	2.2	999 502 906	682 543 218	316 959 688	46.4
rating ratio - per cent	73.51	69.68	-	-	68.53	71.90	-	-
rage mileage represented	231 913	232 492	d 579	d 0.2	232 192	232 824	d 632	d 0.3
mount of depreciation included in maintenance of way and structures and equipment expenses	824 698 685	817 542 965	-	-	$223 110 817	$205 893 175	-	-

d Decrease.

RATE OF RETURN ON PROPERTY INVESTMENT

Period and District	Net Railway Operating Income		Rate of Return	
	1941	1940	1941	1940
12 MONTHS ENDED DECEMBER 31:				
Eastern District (Incl.Pocahontas Region)	$489 852 007	$376 023 679	3.98%	3.10%
Southern District (Incl.Pocahontas Region)	138 673 395	81 939 907	4.35	2.57
Western District	370 977 504	224 579 632	3.41	2.08
United States	999 502 906	682 543 218	3.79	2.61

Note: "Rate of Return" is computed on the property investment of the carriers as shown by their books, including material and supplies and cash, as of January 1, 1941 and 1940, respectively.

REVENUES, EXPENSES, AND NET RAILWAY OPERATING INCOME
Twelve months ended December, 1941 and 1940

Region and Road	Average Miles of Road Operated 1941	Freight Revenue (Accts.101 & 121)		Passenger Revenue (Accts.102 & 122)		Total Operating Revenues		Total Operating Expenses		Net Railway Operating Income	
		1941	1940	1941	1940	1941	1940	1941	1940	1941	1940
New England Region	6 692	8289 893 845	8115 134 428	841 594 485	835 300 516	8280 229 076	8168 491 868	8145 335 338	8122 947 280	835 643 397	830 594 228
Great Lakes Region	26 089	809 085 338	650 913 818	88 241 437	79 215 541	969 408 663	796 575 236	682 278 892	585 643 725	164 378 811	110 930 484
Central Western Region	24 446	918 623 036	731 364 768	114 536 325	111 181 848	1 135 052 844	913 816 287	805 248 788	647 683 908	197 767 435	139 716 813
TOTAL EASTERN DISTRICT	57 197	1 897 602 180	1 499 413 010	264 430 847	225 697 905	2 180 690 583	1 878 883 319	1 635 862 018	1 356 272 913	544 828 565	522 610 406
Pocahontas Region	6 082	288 213 444	255 805 087	13 449 705	8 597 788	331 891 609	281 331 047	284 733 379	230 305 798	92 882 384	48 025 182
Southern Region	16 016	578 965 600	432 811 111	71 054 303	58 085 814	680 243 549	545 816 195	472 548 088	404 508 815	138 671 395	81 939 307
Northwestern Region	45 546	721 816 446	425 522 193	35 740 372	21 483 232	809 878 351	513 798 588	598 625 872	385 785 440	167 134 840	148 497 088
Central Western Region	56 272	820 949 707	639 503.086	77 435 913	80 626 894	997 559 428	787 437 359	708 265 283	533 420 472	289 000 653	18 999 887
Southwestern Region	27 099	140 018 786	265 186 525	28 335 468	18 940 157	198 037 230	310 082 078	171 099 338	199 077 538	170 771 892	204 577 892
TOTAL WESTERN DISTRICTS	130 974	3 092 705 787	3 119 811 800	226 015 861	189 733 885	3 225 611 787	3 238 471 267	2 435 271 960	2 353 198 063	790 339 827	885 273 204
GRAND TOTAL - UNITED STATES	252 192	4 447 548 111	3 537 440 970	524 587 611	417 588 548	5 406 302 370	4 719 004 586	4 071 133 978	3 709 470 976	1 335 168 392	1 407 884 610
NEW ENGLAND REGION:											
Bangor & Aroostook	603	5 157 239	4 498 319	255 943	171 661	5 665 619	4 871 452	3 852 758	3 686 534	1 357 326	843 435
Boston & Maine	1 903	44 718 601	34 523 397	8 245 208	7 072 015	59 203 411	47 397 792	40 297 472	34 297 978	10 492 298	6 757 241
Canadian Nat.Lines in New Eng.	172	1 842 621	1 405 241	35 638	34 534	2 100 022	1 567 138	1 842 250	1 583 197	Def 352 976	Def 633 539
Canadian Pacific (lines in Me.)	234	3 338 088	2 622 563	220 595	149 082	3 743 434	2 982 740	2 885 883	2 033 089	693 216	586 497
Canadian Pacific (lines in Vt.)	71	1 178 800	948 665	32 167	25 233	1 400 693	1 137 78.	1 220 847	1 105 148	Def 448 766	Def 482 48
Central Vermont	432	6 962 405	5 585 378	488 850	336 470	7 851 096	6 393 622	5 545 617	4 520 114	1 488 388	1 018 101
Maine Central	991	12 438 771	10 116 438	1 140 542	932 918	14 726 498	12 157 094	10 281 301	8 845 060	2 701 482	1 944 856
New York Connecting	21	4 093 234	2 493 654	-	-	4 222 939	2 627 995	2 240 772	816 726	2 845 114	1 455 856
New York,New Haven & Hartford	1 868	63 409 034	50 513 702	30 849 206	26 342 490	107 541 354	85 604 109	74 867 757	62 199 234	16 994 935	9 274 358
Rutland	407	2 754 882	2 438 271	325 766	331 435	3 773 088	3 533 726	3 203 778	3 270 146	269 307	Def 91 534
GREAT LAKES REGION:											
Ann Arbor	294	4 580 770	3 974 909	39 396	32 423	4 762 722	4 143 145	3 537 687	3 248 881	662 347	450 81.
Cumbria & Indiana	38	1 885 076	1 584 249	-	-	1 886 372	1 587 444	1 135 427	1 016 018	857 299	384 667
Delaware & Hudson	849	32 132 801	24 575 309	977 331	974 799	34 170 493	26 775 310	22 767 796	18 943 460	8 497 716	5 619 258
Delaware,Lackawanna & Western	992	48 690 032	39 923 784	6 524 092	6 437 133	61 111 361	51 893 975	43 131 773	39 426 078	10 125 797	6 724 598
Detroit & Mackinac	248	723 085	729 331	27 976	25 604	845 528	849 481	643 283	630 638	105 915	130 693
Detroit & Toledo Shore Line	58	4 373 433	3 735 694	-	-	4 385 097	3 740 840	1 937 177	1 748 332	842 335	812 634
Erie (Incl.Chgo.& Erie)	2 257	95 798 572	76 243 627	4 723 460	4 394 256	106 845 421	86 606 612	72 149 109	61 662 046	20 931 583	13 853 996
Grand Trunk Western	1 029	87 394 545	22 560 682	989 413	900 710	30 391 495	25 343 837	21 132 800	18 644 254	6 154 590	3 934 307
Lehigh & Hudson River	96	2 247 228	1 719 462	-	-	2 297 372	1 729 534	1 343 510	1 141 891	428 942	288 672
Lehigh & New England	170	5 241 722	4 126 315	-	-	5 288 487	4 187 082	3 166 700	2 779 [illegible]	1 288 199	1 197 [illegible]
Lehigh Valley	1 228	51 551 816	42 644 728	2 138 309	2 038 090	56 750 722	47 479 817	38 443 395	33 225 586	18 093 504	14 [illegible]
Monongahela	172	5 888 394	4 911 156	6 712	6 713	5 921 489	4 963 625	2 201 854	1 981 614	1 989 771	1 430 896
Montour	51	2 185 761	2 202 795	97	17	2 402.647	2 222 563	1 414 720	1 306 828	826 403	875 [illegible]
New York Central	10 941	336 878 403	270 274 028	66 609 843	59 122 145	441 789 695	370 595 875	331 438 111	278 674 980	57 418 760	44 [illegible]
New York,Chicago & St.Louis	1 708	57 860 661	44 [illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
New York,Ontario & Western	391	5 263 809	4 681 711	331 323	265 [illegible]	6 [illegible]	5 [illegible]	5 [illegible]	5 [illegible]	[illegible]	[illegible]
New York,Susquehanna & Western	190	3 179 228	2 805 115	325 [illegible]	[illegible]	3 [illegible]	3 [illegible]	2 [illegible]	2 [illegible]	[illegible]	[illegible]
Pere Marquette	2 100	35 895 153	30 232 656	1 089 319	952 969	39 044 [illegible]	33 [illegible]	28 [illegible]	24 [illegible]	[illegible]	[illegible]
Pittsburgh & Lake Erie	232	28 688 [illegible]	22 803 [illegible]	[illegible]	[illegible]	30 044 [illegible]	23 947 [illegible]	21 [illegible]	18 [illegible]	[illegible]	[illegible]
Pittsburgh & Shawmut	98	1 046 146	1 [illegible]	-	-	1 [illegible]	1 [illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Pittsburgh & West Virginia	116	5 057 [illegible]	3 [illegible]	527	[illegible]	5 [illegible]	4 [illegible]	3 [illegible]	[illegible]	[illegible]	[illegible]
Pittsburg,Shawmut & Northern	190	1 512 811	1 226 480	-	28	1 [illegible]	1 [illegible]	1 [illegible]	[illegible]	[illegible]	[illegible]
Wabash	2 409	30 800 [illegible]	40 240 [illegible]	2 [illegible]	2 [illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
CENTRAL EASTERN REGION:											
Akron,Canton & Youngstown	171	2 977 317	2 [illegible]	[illegible]	[illegible]	3 117 206	2 [illegible]	1 [illegible]	1 [illegible]	[illegible]	[illegible]
Baltimore & Ohio	6 373	201 782 938	158 [illegible]	13 861 068	10 [illegible]	227 503 022	179 [illegible]	160 [illegible]	132 [illegible]	46 [illegible]	[illegible]
Bessemer & Lake Erie	217	20 217 802	17 909 167	7 889	7 654	20 379 750	18 026 227	10 457 622	8 377 040	7 [illegible]	[illegible]
Central R.R.of New Jersey	694	36 130 725	29 254 682	4 605 943	4 307 230	43 257 579	35 882 986	32 372 [illegible]	27 143 831	5 [illegible]	[illegible]
Chicago & Eastern Illinois	925	14 [illegible]	12 [illegible]	2 [illegible]	1 [illegible]	18 [illegible]	15 [illegible]	11 [illegible]	12 [illegible]	[illegible]	[illegible]
Chicago & Illinois Midland	131	3 150 754	4 489 [illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Chicago,Indpls.& Louisville	549	9 562 974	8 192 256	409 285	490 584	10 864 099	9 095 173	7 093 009	6 532 631	2 [illegible]	[illegible]
Detroit,Toledo & Ironton	470	8 147 138	7 305 [illegible]	3 088	2 933	8 [illegible]	7 [illegible]	4 [illegible]	3 943 614	[illegible]	[illegible]
Elgin,Joliet & Eastern	390	25 815 382	18 892 [illegible]	[illegible]	[illegible]	29 387 656	22 [illegible]	17 [illegible]	13 [illegible]	[illegible]	[illegible]
Illinois Terminal	477	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Long Island	379	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Missouri-Illinois	193	2 643 [illegible]	2 305 [illegible]	2 [illegible]	3 [illegible]	2 667 203	2 [illegible]	1 414 445	1 [illegible]	[illegible]	[illegible]
Pennsylvania R.R.Co.	10 341	477 008 587	363 510 [illegible]	89 022 [illegible]	71 [illegible]	614 041 143	477 [illegible]	442 677 [illegible]	338 [illegible]	97 [illegible]	[illegible]
Pocas--Reading Seashore Lines	410	4 574 434	3 590 669	2 [illegible]	2 [illegible]	7 629 [illegible]	6 [illegible]	6 [illegible]	6 [illegible]	Def [illegible]	Def [illegible]
Reading Company	1 416	72 441 [illegible]	[illegible]	[illegible]	[illegible]	92 566 [illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Staten Island Rapid Transit	24	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Western Maryland	859	21 934 444	18 403 567	99 800	81 711	22 810 110	19 146 204	14 784 [illegible]	12 [illegible]	[illegible]	[illegible]
Wheeling & Lake Erie	507	20 159 [illegible]	16 [illegible]	43	38	21 221 [illegible]	16 [illegible]	13 [illegible]	11 [illegible]	[illegible]	[illegible]
POCAHONTAS REGION:											
Chesapeake & Ohio	3 122	140 [illegible]	[illegible]	[illegible]	[illegible]	4 831 [illegible]	3 [illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Norfolk & Western	2 189	113 337 [illegible]	[illegible]	[illegible]	[illegible]	3 [illegible]	2 [illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Richmond,Fred.& Potomac	118	7 [illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Virginian	653	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]

REVENUES, EXPENSES, AND NET RAILWAY OPERATING INCOME
Twelve months ended December, 1941 and 1940

Region and Road	Average Miles of Road Operated 1941	Freight Revenue (Accts.101 & 121)		Passenger Revenue (Accts.102 & 122)		Total Operating Revenues		Total Operating Expenses		Net Railway Operating Income	
		1941	1940	1941	1940	1941	1940	1941	1940	1941	1940
EASTERN REGION:											
Akron Canton & Youngstown	335	89 143 797	87 048 233	81 269 901	8454 159	611 102 951	88 225 000	86 801 811	85 478 497	8 331 666	81 697 157
Buffalo & West Pointe	93	1 794 664	1 359 663	385 918	295 425	2 451 044	1 927 173	1 826 886	1 649 609	202 137	11 114
Buffalo, Rochester & Pittsburgh	629	4 071 175	3 983 872	326 212	227 312	4 662 498	3 455 343	3 856 386	3 149 609	213 791	Def 225 959
Canada Southern Lines	5 080	49 836 743	37 089 217	11 817 851	7 843 738	67 606 252	50 087 984	44 859 449	39 567 509	11 080 953	3 757 234
Central of Georgia	1 896	18 138 199	13 972 643	5 093 309	1 330 316	22 336 739	16 546 197	16 027 243	14 157 193	4 185 080	771 133
Charleston & Western Carolina	343	3 130 882	3 332 180	38 736	20 218	3 432 304	3 586 743	2 866 822	2 862 625	514 606	438 680
Cin.,New Orleans & Tex.Pac.	337	29 696 012	16 083 191	1 899 009	1 268 542	32 621 592	18 320 182	13 078 386	11 252 494	5 958 047	4 998 160
Clinchfield R.R.	388	11 006 518	8 362 080	58 032	43 859	11 134 236	8 473 836	4 628 414	4 017 472	5 390 038	3 672 084
Columbus & Greenville	168	1 233 838	1 055 806	41 042	53 491	1 352 301	1 177 721	1 085 432	987 525	111 586	67 202
Florida East Coast	685	6 485 812	6 447 130	2 733 076	1 093 802	11 499 121	10 748 838	8 453 013	8 241 683	1 580 527	985 219
Georgia R.R.	329	4 934 934	3 798 881	350 039	199 315	5 615 529	4 087 433	3 996 413	3 336 607	1 437 454	944 138
Georgia & Florida	448	1 572 147	1 299 907	20 897	18 473	1 646 759	1 353 538	1 248 347	1 079 538	190 836	Def 68 799
Georgia, Southern & Florida	398	2 617 133	2 147 660	545 134	486 075	3 594 411	2 982 134	2 544 323	2 117 782	534 290	494 382
Gulf & Ship Island	259	1 385 687	1 105 437	158 673	71 982	2 670 591	2 289 761	1 347 662	1 167 558	Def 38 541	Def 171 921
Gulf, Mobile & Ohio &	1 973	22 122 767	17 323 031	649 770	532 345	25 641 846	18 701 182	16 126 523	14 298 788	3 661 460	1 505 525
Illinois Central (Excl.IRRC)	6 599	120 471 479	72 913 792	12 343 496	9 943 009	142 438 336	114 244 410	101 729 044	85 966 279	25 905 251	16 739 190
Louisville & Nashville	4 830	104 043 093	85 586 727	8 976 429	6 474 833	129 569 572	98 001 627	78 076 835	72 057 369	25 548 223	17 181 993
Mississippi Central	138	1 138 446	787 220	23 327	23 532	1 177 387	842 225	848 901	741 593	187 480	Def 16 643
Nashville, Chattanooga & St.Louis	1 121	16 257 795	12 986 131	1 906 194	1 163 833	19 668 767	15 632 483	12 128 156	12 149 893	3 309 439	2 069 426
New Orleans & Northeastern	204	4 567 746	3 886 205	716 657	439 788	5 631 872	4 357 322	3 764 840	3 034 553	1 486 778	623 776
Norfolk Southern	733	5 401 413	4 134 883	69 936	67 197	5 640 838	4 559 347	4 137 478	3 688 822	849 338	347 605
Piedmont Air Line	4 309	43 476 540	36 492 487	11 026 171	7 536 443	64 608 903	48 490 966	48 800 782	39 270 764	10 106 964	4 604 333
Southern Ry. §	6 952	116 520 375	88 591 660	14 232 779	9 177 690	139 936 434	105 905 395	88 547 313	72 870 181	32 789 981	21 457 294
Tennessee Central	384	2 700 435	2 144 997	55 939	56 417	2 937 785	2 289 413	2 185 033	1 933 930	402 350	310 615
Western Ry.of Alabama	133	1 826 480	1 343 480	392 978	294 080	2 466 901	1 845 085	1 869 715	1 495 516	299 760	178 842
SOUTHERN REGION:											
Atlanta & North Western	8 303	84 320 200	71 413 277	12 916 384	11 428 304	109 866 461	92 800 307	80 866 471	73 162 963	16 792 476	10 099 500
Chicago Great Western	1 508	19 456 004	16 932 156	599 549	489 139	21 506 933	18 748 596	14 990 526	13 283 229	2 918 678	1 784 230
Chicago, Milwaukee, St.Paul & Pac.	10 846	137 246 805	95 133 463	9 646 900	8 100 381	139 646 122	114 175 589	95 694 555	81 170 144	28 181 975	13 845 644
Chicago, St.Paul, Minn.& Omaha	1 679	17 072 537	15 301 579	1 670 441	1 584 827	20 134 522	18 098 946	14 996 029	14 958 390	1 703 732	406 869
Duluth, Missabe & Iron Range	242	34 465 545	21 615 025	21 304	20 270	36 532 438	27 554 484	31 006 029	20 108 190	4 111 359	11 715 259
Duluth, South Shore & Atlantic	550	3 004 884	2 305 697	93 530	90 545	3 367 258	2 680 306	2 994 352	2 115 437	627 446	379 722
Elgin, Winnipeg & Pacific	175	1 633 353	1 484 879	13 366	12 508	1 689 986	1 537 948	1 288 458	1 199 567	32 423	34 584
Great Northern	8 092	110 505 561	89 164 630	4 866 328	4 225 819	125 080 883	101 743 146	78 323 368	65 901 723	28 001 535	21 807 064
Green Bay & Western	234	1 934 793	1 692 649	3 621	4 433	2 000 824	1 769 133	1 439 758	1 258 377	263 227	247 011
Lake Superior & Ishpeming	156	2 399 219	2 961 729	649	643	2 584 497	3 583 977	1 454 385	1 274 290	1 045 285	1 399 816
Minneapolis & St.Louis	1 488	10 779 280	9 179 115	115 906	101 132	12 836 233	9 699 776	8 382 444	7 231 648	1 448 529	1 350 058
Minneapolis, St.Paul & S.S.Marie	4 271	12 658 639	27 784 922	378 983	940 397	16 085 476	30 975 228	26 575 572	23 057 498	5 287 094	4 352 235
Northern Pacific	6 760	74 289 243	59 198 769	4 447 358	3 891 691	85 344 327	68 734 434	59 909 730	51 615 264	19 922 776	13 583 094
Quebec International	152	838 346	739 983	7 603	7 368	945 434	829 240	638 923	577 840	197 702	150 095
Spokane, Portland & Seattle Sys.	945	12 132 719	8 634 315	398 635	386 457	13 289 042	9 738 807	8 136 869	6 786 882	3 030 159	1 282 076
SOUTH EASTERN REGION:											
Alton R.R.	359	14 539 007	11 552 373	3 055 743	2 535 294	20 245 864	16 474 713	14 813 433	13 340 058	1 992 757	15 978
Atchison, Topeka & Santa Fe Sys.	13 430	185 127 258	136 534 625	22 786 021	18 492 634	217 521 355	97 633 262	83 047 925	71 853 973	19 135 005	13 082 778
Chicago, Burlington & Quincy	9 836	94 874 259	78 198 344	10 647 250	8 944 197	96 962 499	80 701 923	69 105 057	62 391 445	17 616 382	8 133 477
Chicago, Rock Island & Pacific	7 955	79 084 441	65 260 004	10 934 933	8 271 251	7 246 471	6 577 782	5 969 805	5 479 854	1 061 185	88 084
Colorado & Southern	747	6 492 321	5 518 907	597 555	443 200	7 442 688	6 400 953	890 322	725 934	414 979	409 718
Colorado & Wyoming	93	1 010 644	791 197			1 010 644	791 197				
Denver & Rio Grande Western	2 517	28 418 356	23 443 096	1 947 741	1 500 084	33 572 694	26 239 195	24 229 120	20 478 873	4 537 079	2 765 157
Denver & Salt Lake	232	2 278 615	2 179 499	60 538	47 286	2 459 879	2 363 251	1 803 473	1 782 139	915 334	913 293
Fort Worth & Denver City	804	5 016 229	5 279 052	719 503	671 632	6 711 910	5 878 382	4 604 322	4 202 836	1 228 082	844 699
Illinois Northern	146	460 545	681 721	6 430	7 110	780 646	946 606	372 295	342 443	191 241	219 815
Kansas City Southern	330	3 381 481	2 680 750	124 239	496 837	3 526 670	3 373 791	3 300 539	3 252 590	Def 200 340	Def 341 703
Louisiana & Arkansas	1 009	240 277 334	180 845 676	33 541 827	24 107 864	293 341 331	222 777 820	199 738 019	160 505 580	57 417 727	32 388 859
Louisiana & Arkansas		4 163 665	6 367 473	54 508	372 257	4 444 995	9 134 459	4 267 608	8 763 133	29 574	77 020
Missouri Pacific System §		2 734 107	2 336 706	22	79	2 775 346	2 372 432	1 694 161	1 516 631	438 381	420 795
Missouri Pacific - M.I.R.R.Lines		2 734 107	2 336 706	22	79	2 775 346	2 372 432	1 694 161	1 516 631	438 381	420 795
Natchez & Southern	239	180 272 442	136 444 342	21 554 471	17 472 731	218 091 994	166 146 758	159 997 894	120 949 111	30 515 171	21 158 960
New Orleans, Texas & Mexico	1										
Texas & New Orleans	1					970 441	864 351	753 601	695 963	78 152	80 380
Texas & Pacific	1					970 441	864 351	753 601	695 963	78 152	80 380
Terminal R.R.Assn.of St.Louis	111	919 435	862 693								
Union Pacific System	9 678	22 781 643	17 518 773	889 490	612 800	24 089 143	18 489 801	16 757 505	13 644 105	4 223 986	2 646 040
Utah Ry.	111	919 435	862 693								
Western Pacific	1 195	22 781 643	17 518 773	889 490	612 800	24 089 143	18 489 801	16 757 505	13 644 105	4 223 986	2 646 040
SOUTHWESTERN REGION:											
Burlington-Rock Island	252	857 467	909 354	284 814	226 832	1 224 134	1 230 794	1 115 485	1 207 078	Def 61 636	Def 184 585
Gulf Coast Lines:											
Beaumont, Sour Lake & Western	148	3 444 535	2 447 772	145 491	94 010	3 807 155	2 730 676	1 999 144	1 656 333	1 085 735	431 525
New Orleans, Texas & Mexico	231	2 954 661	2 144 888	190 683	136 695	3 227 829	2 353 002	1 952 675	1 733 773	1 129 846	728 152
St.Louis, Brownsville & Mexico	609	7 307 109	6 452 382	231 160	177 126	7 962 133	7 009 943	5 130 227	4 794 414	2 014 975	1 530 109
San Antonio, Uvalde & Gulf	111	1 201 760	1 084 531	58 467	44 425	1 196 180	1 169 085	1 128 571	1 205 185	Def 121 250	Def 196 601
International-Great Northern	1 335	13 384 795	9 088 531	1 174 850	813 300	14 075 033	11 349 852	11 145 785	9 880 166	1 334 448	Def 34 529
Kansas City Southern	879	16 693 641	12 607 919	888 347	625 884	19 163 035	14 382 380	12 103 925	8 971 669	4 083 544	3 479 043
Louisiana & Arkansas	128	2 448 831	2 210 307	5 133	4 384	2 497 246	2 268 133	1 148 540	1 022 244	775 187	734 791
Louisiana & Arkansas	881	9 769 432	7 870 018	315 901	134 247	10 553 722	8 320 858	6 187 154	5 427 453	2 433 816	1 731 127
Midland Valley	153	1 443 092	1 138 427	24	55	1 473 163	1 141 403	794 122	753 443	435 152	166 466
Missouri & Arkansas	340	1 253 179	1 105 538	18 343	17 236	1 359 196	1 201 742	1 130 332	979 108	31 382	41 212
Missouri-Kansas-Texas Lines	3 793	29 137 720	23 114 040	2 768 467	2 095 280	34 921 770	27 892 594	25 787 324	21 403 610	3 969 685	1 937 791
Missouri Pacific	7 142	94 689 347	73 935 513	8 175 488	5 301 815	111 900 737	87 134 189	76 601 953	67 087 679	23 033 729	10 083 018
Oklahoma City-Ada-Atoka	132	349 352	278 195	Dr 6	2 304	355 036	294 444	242 648	234 192	23 183	Def 17 523
Oklahoma, Kansas & Gulf	4 736	53 560 295	40 384 845	4 921 702	3 172 951	63 196 181	47 660 983	44 785 078	38 243 974	12 125 497	5 181 934
St.Louis-San Francisco System §	1 672	18 644 830	14 422 734	662 443	377 111	20 256 047	20 642 003	17 526 198	14 958 176	7 495 072	2 795 591
St.Louis Southwestern Lines	1 890	24 434 172	21 748 450	3 430 078	2 314 786	32 859 670	26 496 558	23 643 738	18 779 929	6 918 914	4 875 692
Texas & Pacific	1	1 292 486	813 675	3 373	3 593	1 388 993	974 774	938 445	778 990	304 395	85 889
Texas Mexican	142										

§ Data shown for the Gulf,Mobile & Ohio includes the Gulf,Mobile & Northern and the Mobile & Ohio.
§ Data shown for the Southern Ry. includes the Northern Alabama.
§ Data shown for the Southern Pacific System includes the Texas & New Orleans.
§ Data shown for the St.Louis-San Francisco System includes the St.Louis,San Francisco & Texas.

Note: Figures for individual railway companies include corrections received to February 25, 1942.

OPERATING INCOME ACCOUNT - UNITED STATES - TWELVE MONTHS ENDED DECEMBER, 1936 TO 1941

Railways of Class I (Excluding Switching and Terminal Companies)

Account	1941	1940	1939	1938	1937	1936
Total operating revenues	$5 346 699 998	$4 298 001 598	$3 995 004 243	$3 564 829 551	$4 166 068 601	$4 051 196 452
Freight	4 447 568 333	3 537 440 970	3 251 096 130	2 857 899 307	3 378 108 652	3 307 123 748
Passenger	514 687 031	417 268 962	416 903 149	405 424 288	442 809 304	412 365 686
Mail	108 192 446	101 086 894	99 012 370	95 954 093	97 983 881	95 542 683
Express	57 281 554	55 642 988	55 189 590	48 454 746	57 682 929	60 180 925
All other	218 970 634	186 561 784	172 803 004	157 097 117	189 483 835	175 983 410
Total operating expenses	3 664 175 018	3 090 173 137	2 918 209 706	2 721 494 485	3 119 064 932	2 930 170 374
Maint.of way & struct.	603 110 965	497 167 786	466 830 717	420 088 057	495 593 910	454 448 047
Maint.of equipment	992 511 463	819 103 106	765 935 263	676 374 537	826 708 829	782 805 609
Traffic	111 888 491	107 593 047	106 734 544	102 526 398	105 478 227	100 038 347
Transportation	1 774 977 015	1 501 392 805	1 417 793 911	1 361 041 910	1 510 274 991	1 404 934 801
General	138 214 336	130 498 100	127 568 819	127 501 411	145 344 848	157 184 874
All other	43 472 748	34 419 293	33 346 452	33 962 172	35 664 127	30 758 696
Net operating revenue	1 682 524 980	1 207 828 461	1 076 794 537	843 335 066	1 047 003 669	1 121 026 078
Taxes	546 071 058	396 623 016	355 677 557	340 694 548	325 665 199	319 701 180
Operating income	1 136 453 922	811 205 445	721 116 980	502 640 518	721 338 470	801 324 898
Equipment rents	Dr 102 176 729	Dr 95 735 682	Dr 96 518 027	Dr 94 868 737	Dr 95 020 922	Dr 94 436 437
Joint facility rents	Dr 34 774 287	Dr 32 926 545	Dr 35 769 876	Dr 34 621 142	Dr 36 113 652	Dr 39 714 296
Net railway operating income	999 502 906	682 543 218	588 829 077	373 150 639	590 203 896	667 174 165
Operating ratio - per cent	68.53	71.90	73.05	76.34	74.87	72.33
Average mileage represented	232 192	232 824	233 462	234 436	235 511	236 226

TOTAL OPERATING REVENUES, EXPENSES, AND NET RAILWAY OPERATING INCOME - UNITED STATES BY MONTHS, 1936 TO 1941

Railways of Class I (Excluding Switching and Terminal Companies)

Month	1941	1940	1939	1938	1937	1936
TOTAL OPERATING REVENUES						
January	$377 374 190	$345 619 123	$305 778 767	$279 108 385	$331 707 494	$299 058 328
February	358 413 499	313 504 852	276 904 334	251 037 015	321 853 619	300 430 323
March	416 319 161	327 131 789	315 091 017	283 017 974	377 725 321	308 258 178
April	375 008 368	321 567 097	282 117 754	268 213 597	351 506 719	313 366 439
May	442 285 876	343 494 649	302 617 948	272 609 400	352 542 542	320 926 403
June	455 022 722	344 952 789	321 616 735	282 080 672	351 651 223	330 620 688
July	485 446 306	366 220 237	332 435 852	299 589 726	365 085 700	349 670 910
August	493 674 008	381 538 438	344 399 562	315 335 418	359 611 956	350 461 287
September	488 978 900	382 714 515	381 117 880	322 542 835	363 070 851	357 058 214
October	517 604 959	413 712 272	419 717 399	353 384 223	372 925 813	391 301 303
November	457 011 853	375 498 853	368 026 739	319 629 288	318 180 377	358 405 564
December	479 560 154	381 936 980	345 180 252	318 281 016	300 320 822	372 134 405
Total - Calendar year a	5 346 699 998	4 298 001 598	3 995 004 251	3 565 490 753	4 166 068 602	4 052 734 139
TOTAL OPERATING EXPENSES						
January	$268 968 882	$257 395 976	$232 946 449	$232 565 356	$253 668 741	$231 741 087
February	255 590 196	240 579 920	220 619 933	215 353 899	244 080 932	235 875 419
March	283 328 539	248 634 646	240 358 779	229 004 135	266 198 097	236 546 606
April	274 938 371	245 877 517	227 622 288	219 484 312	261 949 013	235 040 412
May	296 590 475	252 854 916	237 411 054	217 054 008	267 225 209	240 201 794
June	298 932 432	252 507 423	241 785 658	218 132 406	265 521 794	241 764 772
July	310 034 946	262 064 921	241 962 092	222 166 822	266 585 650	248 317 687
August	319 843 279	267 571 191	247 621 627	229 572 952	268 190 412	246 199 293
September	312 288 924	260 239 661	251 166 939	231 982 740	262 711 697	248 449 932
October	361 501 715	276 780 299	271 538 049	242 354 484	270 357 354	261 034 653
November	335 614 115	259 517 849	256 170 301	231 203 926	249 295 347	248 174 224
December	352 531 871	266 148 818	249 006 533	232 619 459	243 354 701	257 279 512
Total - Calendar year a	3 664 175 018	3 090 173 137	2 918 209 708	2 722 199 007	3 119 064 934	2 931 425 056
NET RAILWAY OPERATING INCOME						
January	$62 357 404	$46 012 810	$32 947 172	$7 144 036	$38 866 838	$35 728 532
February	58 478 869	32 856 489	18 637 706	Def 1 909 133	38 783 618	33 562 342
March	80 627 170	37 034 270	34 375 047	14 728 275	69 881 244	35 152 477
April	52 568 880	34 120 523	15 323 766	9 397 133	48 357 724	41 493 455
May	88 630 030	47 408 236	25 172 741	16 665 684	44 239 456	41 797 047
June	93 261 372	48 090 785	39 166 788	25 159 522	59 354 317	50 258 671
July	106 314 792	57 725 166	48 996 611	38 431 251	60 985 276	61 722 346
August	111 317 825	66 530 180	54 567 356	45 421 781	50 756 743	64 636 594
September	104 070 310	74 715 435	86 529 622	50 406 298	59 621 184	70 096 166
October	93 657 126	87 638 354	101 716 356	68 594 769	60 860 439	89 809 372
November	68 764 844	71 560 226	70 414 617	49 692 171	32 519 097	72 376 522
December	80 548 607	78 850 744	60 981 299	49 418 855	25 994 857	70 505 535
Total - Calendar year a	999 502 906	682 543 218	588 829 083	372 845 771	590 203 925	667 347 115

a "Total - Calendar year" based on annual reports for years 1936 to 1939 and revised monthly reports for 1940, and do not always agree with the sum of the monthly totals.

Docket No. 29037
Exhibit No. 12
Witness—D. S. Whitnack

NET RAILWAY OPERATING INCOME BEFORE FEDERAL INCOME TAXES
Class I Railroads Operating in Tennessee
1936-1943
(dollar figures in thousands)

Carrier	1936	1937	1938	1939	1940	1941	1942	12 months 9—30—43	% increase year ending 9—30—43 over 1941
1. C. N. O. & T. P. Ry.	$5461	$5293	$4371	$5734	$5800	$8177	$12337	$15531	89.9%
2. Southern Ry.	19613	14847	14304	20777	21457	38700	75591	98713	155.1
3. L. & N. R. R.	19985	16605	11807	16925	19735	34991	61891	81617	133.3
4. I. C. R. R.	14131	14636	14712	15717	14606	22120	39429	49019	121.6
5. G. M. & O. R. R.	-----	-----	-----	-----	1014	4419	8253	10048	127.4
6. Tenn. Central Ry.	500	334	251	314	330	454	624	1130	148.9
7. Clinchfield	2788	3139	2237	3393	3935	5888	6531	6359	8.0
8. N. C. & St. L. Ry.	1383	840	1482	1989	2214	4060	9239	13289	227.3
Total—8 Roads	-----	-----	-----	-----	$69111	$118809	$213895	$275706	132.1%
Total excl. G. M. & O.	$63861	$65694	$49164	$64849	$68097	$114390	$205642	$265658	132.2%

SOURCE: Reports of the carriers to the Interstate Commerce Commission.

Docket No. 29037
Exhibit No. 13
Witness—D. S. Whitnack

FREIGHT AND PASSENGER SERVICE OPERATING RATIOS, 1936-1943
Railroads Operating in Tennessee

Carrier	1936	1937	1938	1939	1940	1941	1942	Jan.-Sept. 1943 (Estimated)
Passenger Service								
C. N. O. & T. P.	116.0%	106.0%	116.6%	117.7%	117.4%	96.2%	82.1%	52.8%
Southern	111.6	109.0	115.4	116.0	117.7	93.6	57.4	47.1
L. & N.	129.8	134.3	142.6	142.0	144.0	118.9	72.0	52.5
I. C.*	132.4	116.4	120.2	123.4	126.7	118.4	94.0	70.1
G. M. & O.	-----	-----	-----	-----	-----	185.5	120.1	87.3
Tenn. Central	131.2	137.4	150.7	163.1	166.9	175.8	117.5	75.4
Clinchfield	169.0	198.1	194.8	222.6	195.5	163.5	143.8	109.4
N. C. & St. L.	125.2	124.8	126.1	128.4	124.0	112.9	70.1	58.9
Total	123.8	118.1	114.8	115.7	127.4	110.0	72.5	56.0
Freight Service								
C. N. O. & T. P.	52.9	55.4	58.9	54.7	54.3	52.6	51.2	52.4
Southern	61.7	65.4	62.4	60.2	60.5	57.9	55.1	54.6
L. & N.	65.0	67.9	67.2	64.7	64.9	58.5	55.9	57.1
I. C.*	64.7	67.2	64.6	65.5	67.1	64.3	60.8	63.9
G. M. & O.	----	----	----	----	----	62.4	59.0	59.0
Tenn. Central	67.0	69.5	69.2	69.2	69.2	68.8	71.1	64.8
Clinchfield	53.6	50.7	53.1	46.2	45.9	40.4	40.7	46.1
N. C. & St. L.	78.2	80.4	71.6	69.8	69.7	64.7	62.0	64.2
Total	63.7	66.5	64.4	62.9	63.5	59.8	57.2	58.6

SOURCE: Reports of the carriers to the I. C. C.

*Includes Yazoo and Mississippi Valley.

OFFICE OF PRICE ADMINISTRATION
Washington 25, D. C.

Docket No. 29037
Exhibit 13, Page 2
Witness D. S. Whitnack

METHOD USED IN ASSIGNING 1943 REVENUES AND EXPENSES TO PASSENGER SERVICE

Passenger Revenues

The general formula used in assigning operating revenues to passenger service is:

$$Rp = Pr + Mr + Er + KOr$$

where,

Rp =Revenues assigned to passenger service
Pr =Passenger revenues
Mr =Mail revenues
Er =Express revenues
Or =All other operating revenues, excluding freight revenues
K =The 1942 ratio of Rp—(Pr+Mr+Er) to Or

Data for previous years indicate that Passenger Revenues, Mail Revenues and Express Revenues have been assigned by the carriers almost entirely to the Passenger Service. In allocating All Other Operating Revenues, excluding Freight Revenues which are almost entirely assigned to the Freight Service, we have assumed that the 1943 proportion to be assigned to the Passenger Service has not differed materially from that existing in 1942. Less than 6% of the revenues assigned to Passenger Service in 1942 by the eight roads shown in this exhibit was derived from the group of All Other Operating Revenues.

Passenger Expenses

Railway operating expenses assigned to passenger service are derived from the following formula:

$$Ep = KOp$$

where,

Ep =Railway operating expenses assigned to passenger service
Op =All railway operating expenses
K =Percentage of all railway operating expenses assigned to passenger services where K is determined by the Least Squares regression equation based on the relationship between the ratio of Passenger Expenses to Railway Operating Expenses with the ratio of Passenger Car-miles to Total Transportation Car-miles.

The accuracy of this method of estimating operating expenses assignable to passenger service is indicated by the fact that the coefficient of correlation for the eight roads in the years 1936—42 was 98.6% and the standard error of estimate was .23%.

17477-644

Docket No. 29037
Exhibit No. 14
Witness D. S. Whitnack

413

PASSENGER SERVICE SUPPORT FROM FREIGHT REVENUES

Eight Class I Railroads Operating in Tennessee

Carrier	1938 Rev. Ass'nd to Pass. Service (000)	1938 Net Ry. Op. Inc. Pass. Service	1938 % Increase Frt. Rev. 12 Mons. ended 9/30/43 over year 1938	1939 Rev. Ass'nd to Pass. Service (000)	1939 Net Ry. Op. Inc. Pass. Service	1939 % Increase Frt. Rev. 12 Mons. ended 9/30/43 over year 1939	1940 Rev. Ass'nd to Pass. Service (000)	1940 Net Ry. Op. Inc. Pass. Service	1940 % Increase Frt. Rev. 12 Mons. ended 9/30/43 over year 1940	1941 Rev. Ass'nd to Pass. Service (000)	1941 Net Ry. Op. Inc. Pass. Service	1941 % Increase Frt. Rev. 12 Mons. ended 9/30/43 over year 1941
1. C. N. O. & T. P.	$ 1863	$ d 705206	112.2%	$ 1883	$ d 908079	78.3%	$ 2049	$ d 864285	74.1%	$ 2697	$ d 428651	41.8%
2. Southern	14786	d4928905	136.5	14884	d4809621	109.5	15381	522502	94.7	21078	d927988	48.1
3. L. & N.	10195	d6556946	123.5	10161	d6494436	97.6	10658	d6815661	76.6	13483	d6918654	45.2
4. I. C. & Y. & M. V.	15345	d5281968	125.4	15095	d5656189	110.7	15623	d6436582	105.5	18727	d5873061	63.6
5. G. M. & O.	-----	-----	----	-----	-----	-----	-----	-----	-----	1100	d1189424	56.0
6. Tenn. Central	134	d93338	86.7	141	d114276	73.0	145	d123965	65.7	153	d168975	45.3
7. Clinchfield	97	d136331	118.2	84	d131743	76.3	68	d112151	51.1	104	d88613	14.8
8. N. C. & St. L.	2163	d836636	170.7	2210	d841791	147.4	2313	d764363	133.4	2909	d675883	85.3
Total	$44583	$d18519210	128.8%	44458	$d18966145	105.6%	$46257	$d20279589	92.2%	$60251	$d14325973	52.6

SOURCE: Annual reports of carriers to the Interstate Commerce Commission.

d-Deficit.

Docket No. 29037
Exhibit No. 15
Witness D. S. Whitnack

RATE OF RETURN ON VARIOUS INVESTMENT BASES

12 Months Ended September 30, 1943

(dollar figures in thousands)

(1) Carrier	(2) Investment in Ry. Property Used in Transp. Service	(3) Book Investment in Transp. Property	(4) Accrued Depreciation and Accr. Amortization of Defense Projects	(5) Cash and Materials and Supplies	(6) Net Book Investment plus Cash and Materials and Supplies (3) − (4) + (5)	(7) Net Ry. Op. Inc. before Fed. Inc. Taxes	(8) Rent for Leased Road and Equipment	(9) Net Ry. Op. Inc. before Fed. Inc. Taxes minus Rent for Leased Road and Equip. (7)—(8)	(10) Rate of Return Col. (7) + (2) + (5)	(11) Rate of Return Col. (9) + (6)	(12) Rate of Return Col. (7) + (6)
1. C. N. O. & T. P.	$83894	$58980	$10158	$6412	$55234	$15531	$1741	$13790	17.2%	25.0%	28.1%
2. Southern	621954	553361	48347	33397	538521	98713	2659	06054	15.1	17.8	18.3
3. L. & N.	476988	468138	102612	42474	408000	81617	307	81310	15.7	19.9	20.0
4. I. C.	585521	359168	114234	23193	268127	49019	779	48240	8.1	18.0	18.3
5. G. M. & O.	88300	69344	4750	6660	71254	10048	395	9653	10.6	13.5	14.1
6. Tenn. Central	9152	8797	1068	682	8411	1130	27	1103	11.5	13.1	13.4
7. Clinchfield	68897	3070	398	6069	8741	6359	2172	4187	8.5	47.9	72.7
8. N. C. & St. L.	98902	61283	11313	7986	57956	13289	804	12485	12.4	21.5	22.9
9. Total	$2033608	$1582141	$292770	$126873	$1416244	$275706	$8884	$266822	12.8	18.8%	19.5%

SOURCE: Annual and Monthly reports of the carriers to the Interstate Commerce Commission.

Col. 2—Annual Report Sch. 211N
Col. 3—Accounts 701, 702, 702½
Col. 4—Accounts 775, 775½, 776, 776½, 777
Col. 5—Accounts 708, 716
Col. 6—Account 542

OFFICE OF PRICE ADMINISTRATION
Washington, D. C.

Docket No. 29037
Exhibit No. 16
Witness--Dr. S. Whitnack

COMPARATIVE RATES OF RETURN ON VARIOUS BASES

Class I Line-haul Railways

Southern Region, 1937

1.	Final Value as of 1/1/37		$2,440,000,000
2.	Net Book Investment plus Cash and Materials and Supplies of 12/31/36		2,272,264,296
3.	(a) As % of I. C. C. Final Value		93.1%
4.	Investment in Ry. Property Used in Transp. Service & Cash & Mat. & Supp. 12/31/36		3,163,464,711
5.	(a) As % of I. C. C. Final Value		129.7%
6.	Net Ry. Op. Income, 1937	$	74,160,011
7.	Fed. Income Taxes, 1937		1,631,587
8.	N. R. O. I. Bef. Inc. Taxes, 1937	$	75,791,598
9.	Rent for Leased Road & Equipment		13,408,768
10.	N. R. O. I. Bef. Fed. Inc. Taxes Minus Rent for Leased Road and Equipment	$	62,382,830
	Rate of Return bef. Fed. Income Taxes		
11.	(a) On I. C. C. Final Value		3.1%
12.	(b) On Net Book Investment, etc		3.3%
13.	(c) On Investment in Ry. Property used in Transportation Service, etc		2.4%
14.	(d) N. R. O. I. bef. Fed. Inc. Taxes Minus Rent for Leased Road & Equipment (Line 10) by Net Bk. Invest, (Line 2)		2.7%

SOURCES: I. C. C., **Statistics of Railways in the U. S.** and **Fifteen Percent Case, 1937-38**, 226, I. C. C. 41

Line 1—**Fifteen Per Cent Case, 1937-38**, 226 I. C. C. 161

Line 2—Annual reports Accts. 701, 702, 708, 716 less 775, 775½, 776, 776½, 777

Line 4—Annual reports Schedule 211N & Accts. 708 and 716

Line 9—Annual reports, Account 542

Docket No. 29037
Exhibit No. 17
Witness: W. F. Kennedy

LOUISVILLE & NASHVILLE RAILROAD COMPANY
ACCOUNTING DEPARTMENT
A. J. Pharr, Comptroller
Louisville, Ky.

Dec. 8, 1943

Mr. W. P. Bartel, Secretary,
Interstate Commerce Commission,
Washington, D. C.

Dear Sir:

Passenger Fares and Charges for Intrastate Traffic
between Points in Tennessee—I. C. C. Docket No. 29037

During the course of the hearing in the above styled proceeding in Nashville, Tenn., December 2nd, I was permitted by the Examiner to furnish for the L. and N. Railroad Company the Interstate Passenger Revenue from Passenger Fares in the State of Tennessee, on request of a member of the Railroad Commission of the State of Tennessee, covering the periods as indicated below:

Year ended February 28, 1943	$4,173,857
Year ended September 30, 1943	$6,771,770
10 months ended September 30, 1943	$6,126,021

Yours truly,
W. F. KENNEDY,
Assistant Comptroller.

wfk—lks
cc—

Mr. M. B. Miller, Attorney, O.P.A., Washington, D. C.
Mr. F. W. Gwathmey, Special Counsel, Washington, D. C.
Mr. Charles Clark, Genl. Attorney, Sou. Rwy., Washington, D. C.
Mr. E. J. Zoll, Jr., Commerce Attorney, Ill. Cent. R. R. Co., Chicago, Ill.
Railroad Commission of State of Tennessee, Nashville, Tenn.

Docket No. 29037
Exhibit No. 17 RCH-ES
Witness: W. F. Kennedy

Interstate Commerce Commission
Office of Chief Examiner
Washington 25

January 1, 1944.
No. 29037
Passenger Fares & Charges for
Intrastate Traffic bet. Points
in Tennessee

Mr. W. F. Kennedy,
Asst. Comptroller,
Louisville & Nashville R. R. Co.,
Louisville 1, Ky.

Dear Sir:

Receipt is acknowledged of your letter of December 8, 1943, your file No. 408, copies of which were sent to the parties listed below, advising for the L. & N. R. R. Co. the interstate passenger revenue from passenger fares in the State of Tennessee, covering the years ended February 28, 1943 and September 30, 1943, and 10 months ended September 30, 1943, which information was requested by a member of the Railroad Commission, State of Tennessee.

In accordance with the understanding recorded at page 140 of the transcript of testimony at the hearing held in this proceeding in Nashville, Tenn., on December 2, 1943, your letter has been received in evidence and designated Exhibit No. 17.

Very truly yours,
(Signed) ULYSSES BUTLER,
Chief Examiner.

Copies to:

Mr. M. B. Miller, Attorney, O.P.A., Washington, D. C.
Mr. F. W. Gwathmey, Special Counsel, Washington, D. C.
Mr. Charles Clark, Genl. Attorney, Sou. Ry., Washington, D. C.
Mr. E. J. Zoll, Jr., Commerce Atty., Ill. Cent. R. R. Co., Chicago, Ill.
Railroad Commission of State of Tennessee, Nashville, Tenn.

little

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. 574

THE STATE OF ALABAMA AND PUBLIC SERVICE COMMISSION, THE STATE OF TENNESSEE AND THE RAILROAD AND PUBLIC UTILITIES COMMISSION OF THE STATE OF TENNESSEE, COMMONWEALTH OF KENTUCKY AND RAILROAD COMMISSION OF KENTUCKY, APPELLANTS,

vs.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION AND FRED M. VINSON, ECONOMIC STABILIZATION DIRECTOR, BY CHESTER BOWLES, PRICE ADMINISTRATOR, ET AL.

No. 592

FRED M. VINSON, ECONOMIC STABILIZATION DIRECTOR, BY CHESTER BOWLES, PRICE ADMINISTRATOR, APPELLANT,

vs.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION AND THE ALABAMA GREAT SOUTHERN RAILROAD COMPANY, ET AL.

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF KENTUCKY

VOL. II

INDEX.

	Original	Print
Order convening three judge Court	420	419
Motion of Economic Stabilization Director for leave to intervene (omitted in printing)	423	

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., FEBRUARY 6, 1945.

—6425

Record from D. C. U. S., Western District of Kentucky—Continued	Original	Print
Complaint of Economic Stabilization Director (omitted in printing)	425	
Order granting intervention (omitted in printing)	463	
Answer of United States of America	464	420
Answer of Interstate Commerce Commission	466	421
Answer of intervening rail lines	475	428
Motion of rail lines for leave to intervene	478	429
Order granting intervention	481	431
Motion of intervening rail lines to dismiss complaint of Fred M. Vinson	483	431
Proceedings before Interstate Commerce Commission in Docket No. 29037	591	433
Petition of Railroads Operating in the State of Tennessee	591	433
Answer of Railroad and Public Utilities Commission of the State of Tennessee	608	444
Order of the Commission instituting investigation	616	448
Transcript of the stenographer's notes of the hearing held December 2 and 3, 1943, at Nashville, Tennessee, and exhibits filed at said hearing (omitted in printing)	618	
Report of the Commission (omitted in printing)	1050	
Petition of the Railroad and Public Utilities Commission of the State of Tennessee for reconsideration	1076	450
Petition of the Price Administrator for reconsideration	1105	466
Motion for Entry of Order	1154	503
Order of the Commission denying petitions for reconsideration	1158	504
Order of the Commission entered May 8, 1944	1159	504
Corrected order of the Commission entered May 8, 1944 (omitted in printing)	1161	
CIVIL ACTION NO. 706		
Petition	1164	506
Exhibit "A"—Report of Commission (omitted in printing)	1178	
Exhibit "B"—Excerpts from proposed report of Examiner	1215	513
Exhibit "C"—Petition for reconsideration	1220	518
Exhibit "D"—Order denying petitions for reconsideration (omitted in printing)	1239	
Exhibit "E"—Order of Commission, May 8, 1944	1241	529
Exhibit "F"—Corrected order of Commission, May 8, 1944 (omitted in printing)	1244	
Summons and return (omitted in printing)	1247	
Order convening three judge Court	1249	531
Motion of Economic Stabilization Director for leave to intervene (omitted in printing)	1253	
Complaint of Economic Stabilization Director (omitted in printing)	1255	
Order granting intervention (omitted in printing)	1293	

Record from D. C. U. S., Western District of Kentucky—Continued	Original	Print
Answer of United States of America	1294	532
Answer of Interstate Commerce Commission	1296	533
Answer of intervening rail lines	1305	540
Motion of rail lines for leave to intervene	1308	541
Order granting intervention	1311	542
Order on motion to dismiss complaint of Fred M. Vinson	1313	543
Order of submission	1314	544
Motion of intervening rail lines to dismiss complaint of Fred M. Vinson	1316	545
Proceedings before Interstate Commerce Commission in Docket No. 28963	1360	546
Transcript of hearing	1361	547
Caption and appearances	1361	547
Testimony of E. N. Aiken	1369	551
T. J. Stewart	1468	614
J. D. Makinson	1491	629
T. K. Lynch	1509	640
J. A. Higgins	1535	658
P. E. Geil	1547	666
W. W. Simpson	1570	680
J. S. Tassin	1609	706
J. L. Sharpe	1656	736
J. S. Tassin (recalled)	1658	737
W. F. Kennedy	1678	750
W. W. Waldrop	1687	755
C. H. Ohme	1700	763
G. W. Tobias	1717	774
J. G. Bruce	1724	778
Norwood Johnson	1744	789
Jacob Mohr	1782	813
J. G. Bruce (recalled)	1797	823
Exhibits:		
No. 1—Railroad map of Southeastern United States (omitted in printing)	1838	
No. 2—Examples of possible reductions of interstate fares, etc.	1839	848
No. 3—Examples showing fares paid for transportation in coaches by interstate and intrastate passengers	1843	851
No. 4—Report and order of Alabama Public Service Commission in Docket No. 8618	1844	851
Nos. 5 to 7—Examples of present interstate and intrastate fares	1849	856
No. 8—Statement showing manner in which the lower basis of fares in coaches intrastate in Alabama makes it possible for passengers to defeat through published interstate fares, etc.	1852	858
No. 9—Same	1855	859
No. 10—Same	1856	860

	Original	Print
Proceedings before Interstate Commerce Commission in Docket No. 28963—Continued		
Exhibits—Continued		
No. 11—Same	1857	860
No. 12—Same	1858	861
No. 13—Same	1859	862
No. 14—Same	1860	863
No. 15—Statement of present basic passenger fares between points on G. M. & O. R.R. (in cents per mile)	1861	864
No. 16—Examples of advantage, preference and prejudice as between persons in intrastate and interstate commerce in Alabama	1862	864
No. 17—Findings and data in support thereof	1863	865
No. 18—Transcript of hearing before Alabama Public Service Commission in Docket No. 8618	1888	886
Caption and appearances	1889	886
Testimony of E. E. Barry	1894	888
W. W. Simpson	1938	915
J. L. Beight	1961	929
James S. Earley	2016	963
No. 19—Order of I. C. C. in ex parte No. 148, Aug. 1, 1942	2048	982
No. 20—Reply of respondents to petition of Leon Henderson before I. C. C.	2050	984
No. 21—Operating statistics	2058	992
No. 22—Selected passenger revenue and traffic statistics	2069	1001
No. 23—Financial statements	2074	1004
No. 24—Statements showing passenger revenue, 1937–1941	2079	1008
No. 25—Charts showing production of durable goods, etc.	2083	1012
No. 26—Statement reproducing excerpts from decisions of U. S. Supreme Court and I. C. C. (omitted in printing)	2092	
No. 27—Statement showing total railway operating revenues earned in Alabama by petitioners, 1939–1942	2096	1021
No. 28—Statement showing passenger operating revenues, etc., earned in Alabama by petitioners, 1939–1942	2097	1022
No. 29—Same	2098	1023
No. 30—Same showing freight revenues	2099	1024
No. 31—Comparison of present rail coach fares and bus fares with proposed fares	2100	1025
No. 32—Statement showing scheduled and restricted stops of various first class passenger trains	2102	1027
No. 33—Statement showing Alabama operating revenues and expenses, etc., 1941–1942	2104	1029

	Original	Print
Record from D. C. U. S., Western District of Kentucky—Continued		
Proceedings before Interstate Commerce Commission in Docket No. 28963—Continued		
Exhibits—Continued		
No. 34—Same, 1942-1943, Southern District	2117	1036
No. 35—Same, 1941-1942, Southern Region	2118	1036
No. 36—Statement showing railway revenues and expenses—Railways of class I in the United States	2119	1036
No. 37—Same	2122	1038
No. 38—Same	2124	1040
No. 39—Statement reproducing a part of the report in case No. 26550 (omitted in printing)	2129	
No. 40—Passenger and traffic statistics (other than commutation) of class I steam railways in the United States	2134	1046
Nos. 41 to 51 inc.—(omitted in printing)	2152	
CIVIL ACTION NO. 708		
Petition	2218	1047
Exhibit "A"—Corrected order of Interstate Commerce Commission of May 8, 1944 (omitted in printing)	2233	
Exhibit "B"—Opinion and order of Railroad Commission of Kentucky of May 31, 1943, in Suspension Docket No. 29, Increased Passenger Fares and Charges	2235	1062
Exhibit "C"—Opinion of Interstate Commerce Commission of March 25, 1944, in Docket 29000, Kentucky Intrastate Fares, and related cases (omitted in printing)	2249	
Exhibit "D"—Order of Interstate Commerce Commission of May 8, 1944 denying petition of plaintiffs herein for reopening of Docket 29000, Kentucky Intrastate Fares (omitted in printing)	2278	
Exhibit "E"—Report proposed by Examiner C. E. Stiles in Docket 29000, Kentucky Intrastate Fares	2279	1077
Summons and return (omitted in printing)	2294	
Order convening three judge Court	2296	1095
Order filing affidavit of service (omitted in printing)	2297	
Acknowledgments of service of motion for leave to intervene	2300	1096
Motion of Economic Stabilization Director for leave to intervene	2302	1097
Complaint of Economic Stabilization Director	2304	1098
Affidavit of Doris S. Whitnack	2339	1118
Order granting intervention	2348	1125
Answer of United States of America	2349	1125
Intervention of Interstate Commerce Commission	2351	1127
Answer of Interstate Commerce Commission	2352	1128
Motion of rail lines for leave to intervene	2361	1135
Order granting intervention	2364	1136

Record from D. C. U. S., Western District of Kentucky—Continued	Original	Print
Answer of intervening rail lines	2366	1136
Motion of plaintiffs to dismiss answer of Interstate Commerce Commission	2369	1138
Motion of intervening rail lines to dismiss complaint of Fred M. Vinson	2371	1139
Proceedings before Interstate Commerce Commission in Docket No. 29000	2463	1140
Transcript of hearing	2463	1140
Caption and appearances	2463	1140
Testimony of E. N. Aiken	2468	1142
F. H. Tucker, Jr.	2513	1170
E. M. Tolleson	2536	1185
J. S. Tassin	2557	1199
J. E. Marks	2618	1237
P. E. Tanner	2660	1264
Doris S. Whitnack	2666	1268
Exhibits:		
No. 1—Map of Southeastern United States (omitted in printing)	2681	
No. 2—Report and order of Railroad Commission of Kentucky in Suspension Docket No. 29, May 31, 1943 (omitted in printing)	2682	
No. 3—Examples of possible reductions of interstate fares in coaches, etc.	2695	1276
No. 4—Examples showing fares in coaches only paid by interstate passengers, also by intrastate passengers traveling equal distances	2699	1279
No. 5—Examples of possible reductions on interstate fares for round-trip coach tickets, etc.	2701	1280
No. 6—Statistical findings and data in support thereof	2702	1282
No. 7—Statement showing comparison of present and proposed rail coach fares between representative points with bus fares	2734	1301
No. 8—Statement of passenger statistics—Kentucky intrastate and interstate, 1935–1942	2735	1302
No. 9—Various railway operating statistics of respondent carriers, 1938–1942, inc., and first six months of 1943	2744	1310
No. 10—Summary of property investment and operating income account (partially estimated) of respondents for years 1938–1943, inc.	2755	1318
No. 11—Statement showing final assessments of petitioners' properties in Kentucky, 1938–1941, inc., etc.	2757	1320

	Original	Print
Record from D. C. U. S., Western District of Kentucky—Continued		
Proceedings before Interstate Commerce Commission in Docket No. 29000—Continued		
Exhibits—Continued		
No. 12—Statement showing net railway operating income before Federal income taxes, 1936–1943	2758	1321
No. 13—Statement showing freight service operating ratio, 1936–1943	2759	1322
No. 14—Statement showing passenger service operating ratios, 1936–1943	2760	1323
No. 15—Statement showing operating revenues and expenses assigned to passenger service—ten railroads operating in Kentucky	2761	1324
No. 16—Statement showing method used in assigning 1943 revenues and expenses to to passenger service (omitted in printing)	2762	
No. 17—Valuation data for selected railroads operating in Kentucky	2769	1325
No. 18—Statement of freight revenue (accounts 101 and 121)	2770	1326
No. 19—Statement showing investment in railway property used in transportation service	2771	1327
No. 20—Statement of train connections at Fulton, Ky. and Louisville, Ky., June to August inc., 1943	2780	1335
Findings of fact and conclusions of law	2786	1341
Opinion, Miller, J.	2790	1345
Decree	2809	1362
Clerk's certificate (omitted in printing)	2811	
Appeal papers of Appellant States:		
Notice of appeal	2812	1364
Petition for appeal	2814	1365
Assignments of error	2816	1366
Order allowing appeal	2823	1373
Bonds on appeal (omitted in printing)	2825	
Citation (omitted in printing)	2836	
Praecipe for transcript of record	2838	1374
Order as to record	2840	1375
Acknowledgments of service of praecipe	2841	1375
Appeal papers of Economic Stabilization Director:		
Notice of appeal (omitted in printing)	2846	
Petition for appeal	2848	1376
Assignments of error	2850	1377

	Original	Print
Record from D. C. U. S., Western District of Kentucky—Continued		
Appeal papers of Economic Stabilization Director—Continued		
Order allowing appeal	2877	1379
Citation (omitted in printing)	2879	
Praecipe for transcript of record	2881	1379
Order to transmit original record	2884	1380
Order as to record	2887	1381
Statement of points to be relied upon by States of Alabama and Kentucky, etc., in Case No. 574	2888	1381
Statement of points to be relied upon by State of Tennessee, etc., in Case No. 574	2896	1386
Designation of parts of record to be printed by appellants in Case No. 574	2900	1388
Statement of point to be relied upon and designation of parts of record to be printed in Case No. 592	2907	1391
Order noting probable jurisdiction	2911	1393

[fols. 420-463] IN UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF KENTUCKY, LOUISVILLE DIVISION

No. 706

THE STATE OF ALABAMA and PUBLIC SERVICE COMMISSION, Plaintiffs,

vs.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, Defendants

No. 707

THE STATE OF TENNESSEE and PORTER DUNLAP, et al., Constituting The Railroad and Public Utilities Commission of the State of Tennessee, Plaintiffs,

vs.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, Defendants

No. 708

COMMONWEALTH OF KENTUCKY and RAILROAD COMMISSION OF KENTUCKY, Plaintiffs,

vs.

UNITED STATES OF AMERICA, Defendant

ORDER CONVENING THREE JUDGE COURT

Pursuant to section 47 Title 28 of the United States Code, on an application made to me for preliminary or interlocutory injunction, it appearing that the Bill of Complaint in each of the above three cases is brought to enjoin the enforcement of an order of the Interstate Commerce Commission, I hereby call to my assistance for the hearing of the application and cause, the Honorable Elwood Hamilton, Judge of the Circuit Court of Appeals for the Sixth Circuit, and the Honorable Mac Swinford, District Judge of the Eastern and Western Districts of Kentucky.

This 20th of June 1944.

Shackelford Miller Jr., United States District Judge.

[fol. 464] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

No. 707

STATE OF TENNESSEE, et al., Plaintiffs,

vs.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, Defendants

ANSWER OF UNITED STATES OF AMERICA——Filed July 7, 1944

Now comes the United States of America, a defendant herein, by counsel, and in answer to the complaint says:

I

Fred M. Vinson, Economic Stabilization Director, by Chester Bowles, Price Administrator, has filed a motion to intervene as a plaintiff in this case and has also filed an intervening complaint seeking to have the order of the Interstate Commerce Commission here involved set aside.

II

A situation is thus presented where one Government agency is seeking to intervene as a party plaintiff in this case and another Government agency, the Interstate Commerce Commission, is a defendant in the same case. Under these circumstances, and in view of the fact that both Government agencies will have an opportunity to present their respective position through their own counsel, the United States has determined to remain neutral in these proceedings in the District Court, without prejudice to its supporting the position of one or the other agency in any appeal which may be taken from the decree of this court.

[fol. 465] III

Accordingly, the United States neither admits nor denies any of the allegations of the complaint of the above plain-

tiffs or the intervening complaint of the Economic Stabilization Director.

Eli H. Brown, III, United States Attorney; Robert L. Pierce, Special Assistant to the Attorney General.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above answer of the United States has been served upon each of the following named counsel this 7th day of July, 1944:

Leon Jourolmon, Jr., 123 Memorial Building, Nashville, Tennessee;

Allen B. Crenshaw, Interstate Commerce Commission, Washington, D. C.;

Charles Clark, Esq., Southern Railway System, Washington, D. C.;

M. D. Miller, Federal Office Building, No. 1, Washington, D. C.;

Frank W. Gwathmey, Shoreham Building, Washington, D. C.;

E. D. Mohr, Louisville & Nashville R. R., Louisville, Kentucky.

Eli H. Brown, III, United States Attorney.

[fol. 466] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

Civil Action No. 707

THE STATE OF TENNESSEE, et al., Plaintiffs,

v.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, Defendants

ANSWER OF INTERSTATE COMMERCE COMMISSION—Filed July 10, 1944

The Interstate Commerce Commission, hereinafter called the Commission, one of the defendants in the above-entitled action, now and at all times hereafter saving and reserving

to itself all and all manner of benefit and advantage of exception to the many errors and insufficiencies in the plaintiffs' complaint contained, and in the complaint of intervenors, for answer thereunto or unto so much or such parts thereof as it is advised that it is material for it to answer, answers and says:

I

Answering the allegations of paragraphs I, II, III, and IV of plaintiffs' complaint, the Commission admits court jurisdiction of the action herein and of the parties thereto.

II

The Commission admits that the plaintiffs herein have a legal right to maintain this action, and that intervenors are proper parties thereto.

III

Further answering other allegations of the complaints, the Commission alleges that proceedings, directly and im- [fol. 467] mediately concerned in the orders herein involved, were instituted upon the filing of petitions in the Commission, by various railroads operating in the State of Tennessee, to wit: the Louisville and Nashville, the Alabama Great Southern, the Carolina, Clinchfield and Ohio, the Carolina, Clinchfield and Ohio of S. C., the Central of Georgia, the Cincinnati, New Orleans and Texas, the Gulf, Mobile and Ohio, the Illinois Central, the Nashville, Chattanooga and St. Louis, the St. Louis and San Francisco, the Southern, the Tennessee, Alabama and Georgia, the Tennessee Central, and the Yazoo and Mississippi Valley, in July, 1943, complaining that intrastate coach passenger fares, to, from, and between points within the State of Tennessee, except as applied to and by the Gulf, Mobile and Ohio and Illinois Central Railroads, other than in instances where those railroads meet lower rates of competing lines, were unduly preferential of intrastate passengers, unduly prejudicial to interstate passengers, and unjustly discriminatory against interstate commerce, in violation of Section 13 (3) and (4) of the Interstate Commerce Act, seeking under Commission authority, to have such advantage, preference, prejudice, or discrimination removed, as might be found to exist, and to determine what fares and charges, if any, or what maximum or minimum, or maxi-

mum and minimum fares and charges should be prescribed, to remove such advantage, preference, prejudice, or discrimination; said petitions were given Docket No. MC-29037 and hearings were held thereon before an examiner of the Commission at which time evidence was received as submitted by the various parties interested therein, including plaintiffs herein, and thereafter the several parties to the proceedings filed briefs with, and orally argued before the Commission, matters involved in said proceedings, following which the Commission entered its report of March 25, 1944; thereafter plaintiffs filed petition for reopening, [fol. 468] reargument, and reconsideration of the report of March 25, 1944, which petition was denied by order dated May 8, 1944; under corrected order issued May 24, 1944, rail carrier respondents in the above proceedings were required to establish on or before July 1, 1944, later extended to August 1, 1944, and to thereafter maintain and apply, passenger fares for intrastate transportation in Tennessee, and in the States of Alabama, North Carolina, and Kentucky, also involved in said proceedings under the same report and order, on a basis no lower than the passenger fares presently maintained and applied by the respective respondents, for like accommodations in interstate transportation to, from, and through the said states, and providing that the resulting aggregate charge, made by any of said respondents for intrastate transportation in any of the said states, shall not exceed the aggregate charge made for like accommodations for a like distance by the same respondents in interstate transportation to, from, or through such states.

The Commission further alleges that the proceedings, report, and orders here involved, indirectly and collaterally relate to previous consideration, decisions, and orders of the Commission, in respect to the determination of reasonable passenger fares in interstate commerce, particularly with reference to such fares in Southern Passenger Association territory, generally located east of the Mississippi River and south of the Ohio and Potomac Rivers, such consideration and decisions covering a period of many years prior to the report involved in this action, a summary of that previous consideration, and of reports and orders issued in connection therewith, being set forth in the Commission report of March 25, 1944, 258 I. C. C. 133, at pages 134, 135, 136, and 137, under the heading of "History of

Rail Fares." Such interstate fares, so determined by the [fol. 469] Commission as reasonable, provide the basis of comparison, standard or relation to the intrastate fares here involved. Previous Commission consideration of such interstate fares discloses that passenger fares in said southern territory for many years, up to June 10, 1918, were generally 2.5 cents per mile in all classes of equipment, on which last-named date, the Director General of Railroads increased the fare to 3 cents per mile in all classes of equipment, which said increased fare remained in effect, except that from June 10 to November 30, 1918, an additional charge of 16⅔ percent of the one-way fare was assessed for travel in sleeping and parlor cars, until August 25, 1920, when fares generally were raised to 3.6 cents per mile in all classes of equipment, plus a surcharge in sleeping and parlor cars; that during 1932 and 1933 certain rail carriers operating in southern territory experimented with lower fares, in attempts to attract passenger business in competition with private automobiles and busses, as set forth in said report of March 25, 1944, at pages 134 and 135; the said higher passenger fares of 3.6 cents per mile, established August 26, 1920, with exception of the exeprimental lower fares established by certain rail carriers, remained in effect until February 28, 1936, when the Commission by its report in *Passenger Fares and Surcharges*, 214 I. C. C. 174, reviewed railroad passenger fares throughout the nation, found the basic fares to be unreasonable, and prescribed maximum reasonable fares of 2 cents per mile, one-way and round-trip in coaches, and 3 cents per mile one-way and round-trip in Pullman cars, without prejudice to the maintenance of lower fares in coaches or Pullmans, and finding that the Pullman surcharge was unreasonable, requiring the same to be canceled, and finding that the existing experimental fares in southern territory were not unreasonable or otherwise unlawful; that on November 15, 1937, carriers maintaining the experimental coach fares of [fol. 470] 1.5 cents, increased that fare to 2 cents per mile, but restored the 1.5-cent fare on January 15, 1939, with certain southern lines, including Illinois Central, Mobile and Ohio, St. Louis-San Francisco, and Norfolk and Western Railway, which said lines retained the 2-cent basis, with some exceptions in meeting competition of other lines.

In a proceeding designated as Ex Parte 148, instituted at the instance of the railroads, the Commission by order

of January 21, 1942, authorized a 10 per cent increase in passenger fares, held to be reasonable and otherwise lawful, and necessary to enable the rail carriers to render adequate and efficient transportation service during the national emergency, the said report being entitled *Increased Railway Rates, Fares, and Charges, 1942*, 248 I. C. C. 545, 565, 566. Under the 10 per cent increase of passenger fares the reestablished coach fares of 1.5 cents, which had remained in effect until February 10, 1942, became 1.65 cents, and fares of 2 cents became 2.2 cents and fares of 3 cents became 3.3 cents, with round-trip fares modified to reflect the increases in the one-way fares, such increased fares upon various subsequent dates having also become effective on intrastate traffic in all states. Upon petition of rail carriers in southern territory filed July 14, 1942, the Commission authorized such carriers to increase the lower interstate passenger fares in coaches in that territory to 2.2 cents a mile, the order being entered on August 1, 1942, and such increased fares were published to become effective October 1, 1942, and have since remained in effect on interstate traffic. Thereafter, with the approval of the regulatory authorities of the States of Florida, Georgia, Louisiana, Mississippi, Virginia, and South Carolina, the intrastate one-way and round-trip coach fares and the round-trip fares in sleeping and parlor cars, were increased to the respective levels of the corresponding interstate fares, and the regulatory authorities of Alabama, North Carolina, Tennessee and Kentucky declined to authorize [fol. 471] the increases, sought by the rail carriers, in one-way and round-trip coach fares, and Alabama and Tennessee also declined to authorize increase in the round-trip fares in sleeping and parlor cars. The refusal of the States of Alabama, North Carolina, Tennessee, and Kentucky to authorize the increases of passenger fares to the level of the interstate fares, was the basis of petitions of rail carriers in the proceedings herein involved, that the resulting differential in favor of intrastate fares, as compared to the interstate fares, results in a violation of Section 13 (3) and (4) of the Act.

The report of March 25, 1944, embraced, considered, and decided the subject of proceedings in Nos. MC-29037, *Tennessee Intrastate Fares*, and also No. MC-29000, *Kentucky Intrastate Fares*, No. MC-29036, *North Carolina Intrastate Coach Fares*, and MC-28963, *Alabama Intrastate Fares*,

and found, (1) that interstate one-way and round-trip coach fares in effect to, from, and through points in Alabama, Kentucky, North Carolina, and Tennessee, and interstate round-trip fares in sleeping and parlor cars in effect to, from, and through points in Alabama and Tennessee are just and reasonable, (2) that intrastate one-way and round-trip coach fares in Alabama, Kentucky, North Carolina, and Tennessee, with certain designated exceptions, and intrastate round-trip fares in sleeping and parlor cars in Alabama and Tennessee, are lower than the corresponding fares applicable interstate, and intrastate generally throughout southern territory, except as to the states named, (3) that conditions affecting the transportation of passengers in coaches in the said four states, and in sleeping and parlor cars in Alabama and Tennessee, intrastate, on the one hand, and interstate to, from and through those respective states, on the other, are substantially similar, (4) that interstate passengers in these states travel in the same trains, and generally in the same cars with intrastate passengers, but are forced to pay higher fares than the intrastate passen- [fol. 472] gers for like services, to the undue and unreasonable advantage and preference of intrastate passengers, and the undue and unreasonable disadvantage and prejudice of interstate passengers, (5) that respondent rail carriers' revenues under the lower intrastate fares, are less by at least $725,000 per annum in Alabama, $500,000 in Kentucky, $525,000 in North Carolina, and $525,000 in Tennessee, than they would be if those fares were increased to the level of the corresponding interstate fares, and traffic moving under these lower intrastate fares is not contributing its fair share of the revenues, required to enable respondents to render adequate and efficient transportation service, and (6) that the maintenance of such intrastate fares, to the extent that they are lower than the corresponding interstate fares, causes and will cause undue and unreasonable advantage to and preference of persons in intrastate commerce, undue and unreasonable disadvantage to and prejudice against persons in interstate commerce, and undue, unreasonable and unjust discriminations against interstate commerce, and that this unlawfulness should be removed by increasing the said intrastate fares in the respective states to the level of the corresponding interstate fares contemporaneously maintained by respondent car-

riers, to, from, and through such states, provided that the aggregate charge made by any of respondents for the intrastate transportation in any of the states, shall not exceed the aggregate charge made for like accommodations for a like distance by the same respondents for interstate transportation to, from, or through such state. These findings were made without prejudice to the right of authorities of the affected states, or of any interstate party, to apply for modification thereof as to any specific interstate fare, on the ground that such fare is not related to interstate fares in such a way as to contravene the provisions of the Interstate Commerce Act.

[fol. 473] IV

The Commission further alleges that the findings and conclusions in said report of March 25, 1944, were and are, and that each of them was and is, fully supported and justified by the evidence submitted in said proceedings as aforesaid, and that, in making said report, it considered and weighed carefully, in the light of its own knowledge and experience, each fact, circumstance and condition called to its attention on behalf of the parties to the said proceedings by their respective counsel.

The Commission further alleges that said report and order, above referred to, was not made or entered either arbitrarily or unjustly, or without proof or contrary to the relevant evidence, or without evidence to support it, that in making said report and order the Commission did not exceed the authority conferred upon it by law, and denies each of and all of the allegations to the contrary contained in the complaints.

Except as herein expressly admitted, the Commission denies the truth of each of and all of the allegations contained in the complaints, insofar as they conflict either with the allegations herein, or with either the statements or conclusions of fact included in the said report of March 25, 1944, above referred to.

V

The Commission specifically denies the allegations contained in paragraphs XII, XIX, XX, and XXI.

All of which matters and things the Commission is ready to aver, maintain, and prove as this Honorable Court shall direct, and hereby prays that said complaint be dismissed.

Interstate Commerce Commission, by Allen Crenshaw, Attorney.

Daniel W. Knowlton, Chief Counsel, of Counsel.

[fol. 474] *Duly sworn to by Claude R. Porter. Jurat omitted in printing.*

[fol. 475] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

Civil Action No. 707

STATE OF TENNESSEE and RAILROAD AND PUBLIC UTILITIES COMMISSION, Plaintiffs,

v.

THE UNITED STATES and THE INTERSTATE COMMERCE COMMISSION, Defendants

ANSWER OF RAIL LINES, INTERVENING DEFENDANTS—Filed July 12, 1944

Come now, in due season, rail lines operating in the State of Tennessee, who are intervening defendants herein, and file this, their joint and several answer to the complaint or petition herein filed by the State of Tennessee and Railroad and Public Utilities Commission.

I

These intervening defendants hereby adopt the answer herein filed on behalf of Interstate Commerce Commission, a defendant in said cause, as their answer in the same manner and to the same extent as though each paragraph thereof were herein fully set out.

II

Further answering, these defendants specifically deny the averments in paragraphs X, XI, XII, XIII, XIV, XV, XVI, XVII, XVIII, XIX, XX, and XXI.

[fols. 476-477] Wherefore, having answered, these intervening defendants pray that the petition or complaint herein be dismissed.

E. A. Smith, Illinois Central Railroad Co., Chicago, Illinois. W. L. Grubbs, Louisville & Nashville RR. Co., Louisville, Ky. Y. D. Lott, Jr., Gulf, Mobile & Ohio Railroad, Mobile, Ala. F. W. Gwathmey, 1110 Shoreham Bldg., Washington, D. C. Charles Clark, Southern Railway Office Bldg., 15th & K Streets, N. W., Washington 13, D. C.

[fol. 478] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

Civil Action, No. 707

STATE OF TENNESSEE and RAILROAD AND PUBLIC UTILITIES COMMISSION,

v.

THE UNITED STATES and THE INTERSTATE COMMERCE COMMISSION, Defendants

MOTION FOR LEAVE TO INTERVENE—Filed July 12, 1944

Come now, under and by virtue of Title 28, U. S. C. Section 45a,

The Alabama Great Southern Railroad Company,
Carolina, Clinchfield and Ohio Railway of South Carolina, operated as Clinchfield Railroad by Atlantic Coast Line Railroad Company and Louisville and Nashville Railroad Company, Lessees,
Central of Georgia Railway Company (M. P. Calloway, Trustee),
The Cincinnati, New Orleans and Texas Pacific Railway Company,
Gulf, Mobile and Ohio Railroad Company,
Illinois Central Railroad Company,
Louisville and Nashville Railroad Company,
The Nashville, Chattanooga & St. Louis Railway,

St. Louis-San Francisco Railway (J. M. Kurn and John G. Lonsdale, Trustees),
Southern Railway Company,
Tennessee, Alabama and Georgia Railway,
Tennessee Central Railway Company and
The Yazoo and Mississippi Valley Railroad Company,

and move the court for leave to appear and intervene in the above-stated case and to become parties defendant thereto in order to protect their rights involved in said case.

[fol. 479] Each of said movants is and for some years has been a corporation, or receivers of a corporation, engaged in operating a railroad within the State of Tennessee, and by its own rails or in connection with the rails of some one or more of the other movants engaged in operating a line of railroad between points within the State of Tennessee and points in other states within Southern territory; Southern territory is familiarly described and known as embracing those states lying south of the Ohio and Potomac Rivers and east of the Mississippi River;

And as such corporations, or receivers thereof, each of said movants has operated and is now operating as a common carrier of passengers by railroad intrastate within the State of Tennessee and interstate within Southern territory; and as such has been and is subject to the provisions of the Act of Congress known as the Interstate Commerce Act;

And said movants, jointly and severally, are vitally interested in the subject matter of this complaint. They are the common carriers by railroad operating within the State of Tennessee upon whose petition the Interstate Commerce Commission instituted the investigation docketed No. 29037 in which the report of March 25, 1944, and the orders of May 8, 1944, set out as Exhibits B, A, and C, respectively, to the complaint herein were made and issued.

[fol. 480] And each of said movants desires to here appear and intervene on behalf of defendants, United States of America and Interstate Commerce Commission, and

to answer the bill of complaint and participate in the trial thereof as a party defendant.

E. A. Smith, Illinois Central System, 135 East 11th Place, Chicago 5, Ill. W. L. Grubbs, Louisville & Nashville R. R. Co., Louisville 1, Ky. Y. D. Lott, Jr., Gulf, Mobile & Ohio R. R. Co., Mobile 5, Ala. F. W. Gwathmey, 1110 Shoreham Bldg., Washington 5, D. C. Charles Clark, Southern Railway Office Bldg., 15th & K Streets, N. W., Washington 13, D. C. Attorneys for Movants.

[fols. 481-482] ORDER

The foregoing motion read and considered; let the same be filed; and it is further ordered that the motion be allowed and that the movants, and each of them, be and they are hereby made parties defendant in the above-entitled cause.

Shackelford Miller, Jr., United States District Judge.
This 12th day of July, 1944.

[fol. 483] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

No. 707. Civil

STATE OF TENNESSEE and RAILROAD AND PUBLIC UTILITIES COMMISSION, Plaintiffs

v.

THE UNITED STATES and THE INTERSTATE COMMERCE COMMISSION, Defendants

MOTION TO DISMISS COMPLAINT OF FRED M. VINSON, DIRECTOR OF THE OFFICE OF ECONOMIC STABILIZATION—Filed July 17, 1944

Come now, in due season, the railroad intervening defendants in the above-stated cause, and file this, their mo-

tion to dismiss the complaint of Fred M. Vinson, director of the Office of Economic Stabilization, an intervening party plaintiff, upon the following grounds:

I

Said Complaint of Director Vinson fails to state a claim upon which relief can be granted in this cause.

II

In the first paragraph of the prayer of the complaint of said Director Vinson, he asks "that the constitutional and judicial matters be tried de novo with respect to the allegations of paragraph 17 hereof."

No intervening party plaintiff may assert an interest or raise an issue greater or beyond the scope of the interest and issues raised in the original suit. In the proceedings in this cause before this Court the original plaintiffs are not entitled to a trial de novo; said original parties [fol. 484] plaintiff are limited to the evidence and record which was before the Interstate Commerce Commission in the proceeding before it giving rise to the order attacked in the original suit in this Court. Said complaint of Director Vinson undertakes to inject new and additional evidence to that which was before the Interstate Commerce Commission in Dockets 28963 (Alabama), 29000 (Kentucky), and 29037 (Tennessee); and seeks a trial de novo in this Court.

Wherefore, the railroads, who are intervening defendants in this cause, move the dismissal of said Director Vinson's complaint, or so much thereof as unduly broadens the interest and issues raised in the original complaint,—that is to say, specifically, strike paragraph numbered 17 and the affidavit of Doris S. Whitnack and its accompanying tables referred to in said paragraph 17, and strike the first paragraph from the prayer of said Director Vinson's complaint numbered "First."

E. A. Smith, I. C. RR. Co. Chicago, Ill.; W. L. Grubbs, L. & N RR. Co., Louisville, Ky.; Y. D. Lott, Jr., G. M. & O. RR., Mobile, Ala.; F. W. Gwathmey, 1110 Shoreham Bldg., Wash., D. C.; Charles Clark, Southern Ry. Office Bldg., 15th & K Sts., N. W., Wash. 13, D. C., Attorneys for the Railroad Intervening Defendants.

[fols. 485-590] Copy received. Further service waived. 7/17/44. Leon Jourolmon, Jr. Attorney for State of Tennessee; Leon Jourolmon, Jr., Railroad & Public Utilities Commission, M. D. Miller, Vinson director.

[fol. 591] BEFORE THE INTERSTATE COMMERCE COMMISSION

Docket No. 29037

In the Matter of PASSENGER FARES AND CHARGES FOR INTRASTATE TRAFFIC BETWEEN POINTS IN TENNESSEE

PETITION ON BEHALF OF RAILROADS OPERATING IN THE STATE OF TENNESSEE—Filed September 10, 1943

[fol. 592] *To the Interstate Commerce Commission:*

The Alabama Great Southern Railroad Company, Carolina, Clinchfield and Ohio Railway, Carolina, Clinchfield and Ohio Railway of South Carolina (Lessees: Atlantic Coast Line Railroad Company; Louisville and Nashville Railroad Company), Central of Georgia Railway Company (M. P. Callaway, Trustee), The Cincinnati, New Orleans and Texas Pacific Railway Company, Gulf, Mobile and Ohio Railroad Company, Illinois Central Railroad Company, Louisville and Nashville Railroad Company, The Nash-[fol. 593] ville, Chattanooga & St. Louis Railway, St. Louis-San Francisco Railway (J. M. Kurn and John G. Lonsdale, Trustees), Southern Railway Company, Tennessee, Alabama & Georgia Railway Company, Tennessee Central Railway Company and The Yazoo and Mississippi Valley Railroad Company present this petition and respectfully show:

I

Petitioners are common carriers by railroad and are engaged, according as their respective lines are located, in the transportation of passengers and freight in interstate commerce to, from, and between points in the State of Tennessee, and are likewise engaged in the transportation of passengers and freight in intrastate commerce between points within the State of Tennessee. As such common carriers, each of your petitioners is subject to the provisions

of the Acts of Congress known as the Interstate Commerce Act, as amended, and the Transportation Act of 1940.

This petition is filed pursuant to the provisions of the said Acts of Congress and more particularly Sections 3, 13, and 15(a) of the said Interstate Commerce Act, as amended.

II

In *Passenger Fares and Surcharges*, 214 I. C. C. 174, the Commission found that passenger fares of 2 cents per mile in coaches would be reasonable for application throughout the United States. At the same time it found that the "experimental" fare of 1.5 cents per mile for one-way transportation in coaches, which was then being maintained by most of the railroads operating in Southern Passenger Association territory, was not unlawful. Thereafter, effec- [fol. 594] tive November 15, 1937, the railroads operating in Southern Passenger Association territory, including your petitioners, increased their basic coach fare, interstate and intrastate, to 2 cents per mile; but, effective January 15, 1939, these railroads, with certain exceptions, restored the experimental fare of 1.5 cents per mile which had previously been in effect. This subnormal fare was restored by the lines in question because of a conviction that the reduction was necessary under the circumstances then existing in order to attract passenger traffic to the railroads. Among the railroads which continued to maintain the basic fare of 2 cents per mile for travel in coaches, both interstate and intrastate, were four of your petitioners, namely, the Gulf, Mobile and Ohio Railroad Company, the Illinois Central Railroad Company, the St. Louis-San Francisco Railway Company and the Yazoo and Mississippi Valley Railway Company. Even these latter railroads, however, reduced their fares between certain points where competition with other rail lines whose fares had been reduced to 1.5 cents per mile required such reductions.

III

By its order of January 21, 1942, in Ex Parte No. 148, *Increased Railway Rates, Fares, and Charges, 1942*, 248 I. C. C. 545, this Commission approved a proposed uniform increase of 10 per cent in all passenger fares and charges, with certain provisions as to the disposition of fractions. Thereupon, interstate passenger fares throughout the

United States were increased 10 per cent, effective February 10, 1942. The basic interstate coach fare of 1.5 cents per mile generally in effect in the South thus became 1.65 [fol. 595] cents, and the basic coach fare of 2 cents per mile generally in effect throughout the rest of the United States became 2.2 cents. The same increase of 10 per cent was authorized by the Railroad and Public Utilities Commission of the State of Tennessee in the Tennessee intrastate fares and effective February 10, 1942, your petitioners, with the exception of the Gulf, Mobile and Ohio Railroad Company, the Illinois Central Railroad Company, the St. Louis-San Francisco Railway Company and the Yazoo and Mississippi Valley Railway Company, increased their basic coach fare in Tennessee to 1.65 cents per mile. The Gulf, Mobile and Ohio Railroad Company, the Illinois Central Railroad Company, the St. Louis-San Francisco Railway Company, and the Yazoo and Mississippi Valley Railway Company, which had in effect a basic coach fare of 2 cents per mile, on the same day increased their intrastate fares to 2.2 cents per mile.

IV

On July 14, 1942, substantially all of the railroads operating in Southern Passenger Association territory, including all of your petitioners, filed a petition with this Commission for the authority necessary to enable them to increase all fares for one-way interstate transportation in coaches to 2.2 cents per mile, thereby seeking to establish the same basis of fares for transportation in coaches throughout Southern Passenger Association territory as applied elsewhere throughout the United States.

Upon consideration of said petition, this Commission, on August 1, 1942, entered an order reading, in part, as follows:

[fol. 596] "*And it further appearing,* That a basic coach fare of 2 cents per mile was approved by the Commission for application prior to Ex Parte No. 148 on railroads generally throughout the country, including the lines of said petitioners; that a general increase of 10 per cent was authorized to be made in all passenger fares in Ex Parte No. 148, for the reasons set forth in the report therein, *supra;* and that a basic coach fare of 2.2 cents per mile is now maintained on

Class I railroads generally throughout the country, with the exception of the aforesaid petitioners:

* * * * * * *

"*It is further ordered*, That the order of January 21, 1942, in Ex Parte No. 148, be, and it is hereby, further modified so as to authorize the aforesaid petitioners to apply the increase of 10 per cent approved in said order to a basic coach fare of 2 cents per mile on the lines of said petitioners, subject to the rule for the disposition of fractions as modified by order of July 6, 1942, in said proceeding, and that in all other respects said order of January 21, 1942, shall remain in full force and effect."*

Pursuant to the authority of said order, your petitioners and other railroads operating in Southern Passenger Association territory filed tariffs with this Commission to become effective October 1, 1942, increasing the basic fare for one-way interstate transportation in coaches to 2.2 cents per mile. The tariffs became effective October 1, 1942, and are now in effect throughout Southern Passenger Association territory, including Tennessee.

[fol. 597] On the same date, your petitioners and the railroads generally in all territories established a uniform basis of interstate round-trip fares in lieu of the round-trip fares constructed on various basic rates and with varied return limits which had previously been in effect. The round-trip coach fares so established are three-months limit fares made on the basis of 180 per cent of the one-way coach fares of 2.2 cents per mile for the round trip, or 1.98 cents per mile traveled. The round-trip fares good for transportation in sleeping or parlor cars, established at the same time, are likewise three-months limit fares but are on the basis of 2.75 cents per mile.

V

On or about October 26, 1942, petitioners filed with the Railroad and Public Utilities Commission of Tennessee

---

*The supplemental order of July 6, 1942, in Ex Parte No. 148, here referred to, provides that "fractions of less than 0.5 cent shall be dropped and fractions of 0.5 cent or greater may be increased to the next whole cent."

tariffs designed to make uniformly effective on December 1, 1942, for intrastate travel in Tennessee, the basic one-way coach fare of 2.2 cents per mile which had already been established by petitioners for interstate travel, as hereinbefore shown, and to make effective also, at the same time, the uniform round-trip fares which had been established for interstate application on October 1, 1942.

Pursuant to the provision of the Act of Congress entitled "An Act to Amend the Emergency Price Control Act of 1942, to Aid in Preventing Inflation, and For Other Purposes," approved October 2, 1942, Executive Order 9250, dated October 3, 1942, and Order No. 1 of the Director of Economic Stabilization, dated October 14, 1942, your petitioners gave due notice to the Price Administrator of the Office of Price Administration of the proposed increases in their fares for intrastate transportation of passengers be- [fol. 598] tween points in Tennessee, and consented to the timely intervention by the Price Administrator before any state or federal authority having jurisdiction to consider such increases.

The Railroad and Public Utilities Commission of Tennessee on its own motion suspended the tariffs pending a hearing thereon, and after due notice held a hearing on May 13, 1943, at Nashville, Tenn., at which time and place your petitioners offered evidence fully justifying the changes proposed in their intrastate fares for the purpose of putting them upon the interstate level.

On August 30, 1943, the Railroad and Public Utilities Commission of Tennessee issued its opinion and order, cancelling the suspended tariffs and directing the respondent railroads to leave in full force and effect the rates which were in effect immediately prior to the date of suspension.

A copy of the said opinion and order appears as an appendix to this petition.

VI

Petitioners aver that the interstate passenger fares and charges which they now have in effect are just and reasonable, and that the passenger fares and charges which they are required to maintain for intrastate application in Tennessee as a result of the order of the Railroad and Public Utilities Commission of Tennessee, above referred to, denying them the right to increase such fares and charges to

the interstate level, cause an undue and unreasonable advantage, preference, and prejudice as between persons and localities in intrastate commerce in Tennessee, on the one hand, and interstate commerce, on the other hand, and un-[fol. 599] due, unreasonable, and unjust discrimination against interstate commerce in violation of the Interstate Commerce Act, as amended, and particularly Sections 3 and 13 of said Act.

Petitioners further aver that by reason of the application of the said intrastate fares and charges within the State of Tennessee they are being deprived of a large amount of revenue to which they are rightfully entitled, and that this loss in revenue results in an undue burden upon and a discrimination against interstate commerce and an undue preference of intrastate commerce in violation of the Interstate Commerce Act, as amended. Petitioners are also being subjected to further losses by reason of interstate passengers purchasing tickets to points in Tennessee on or near the border and repurchasing at such points.

Petitioners further show that if the intrastate passenger fares and charges which they are now required to maintain for intrastate application in Tennessee are allowed to remain in effect the purpose of the Interstate Commerce Act will be defeated, and the result will be a continuing undue and unreasonable advantage and preference of intrastate commerce, and a continuing undue prejudice and undue, unreasonable, and unjust discrimination against interstate commerce and as between persons and localities.

Wherefore, your petitioners pray that the Commission institute at an early date an investigation with respect to the matters and things herein set forth; that, after due notice has been given to the State of Tennessee and the authorities thereof, and after such hearing or hearings as the Commission may direct, an order be entered declaring discriminatory, prejudicial, unjust, and unlawful, and as cre-[fol. 600] ating undue burden upon interstate commerce, any fares or charges required to be observed for the intrastate transportation of passengers within the State of Tennessee as a result of the order of the Railroad and Public Utilities Commission of Tennessee, hereinbefore referred to, which are less than the fares and charges now maintained by petitioners for like and similar service in interstate trans-

portation; that this Commission by its order prohibit such advantage, preference, and prejudice as between persons and localities in intrastate commerce, on the one hand, and interstate commerce, on the other hand, and such unjust discrimination against and undue and unlawful burden upon interstate commerce, and prescribe the fares and charges or the maximum and minimum thereafter to be charged in connection with the intrastate transportation of passengers within the State of Tennessee in such manner as in its judgment will remove the advantage, preference, prejudice, and discrimination aforesaid; and petitioners pray for such other general relief in the premises as to this Commission may seem right and proper.

Respectfully submitted, W. A. Northcutt, Elmer A. Smith, Charles Clark, L. L. Oliver, Chas. P. Reynolds, Frank W. Gwathmey, Attorneys for Petitioners.

Washington, D. C. Sept. 8, 1943.

[fol. 601] APPENDIX

BEFORE THE RAILROAD AND PUBLIC UTILITIES COMMISSION OF THE STATE OF TENNESSEE, NASHVILLE

I. & S. Docket No. 2533
Re: Increased Passenger Fares, 1942

Appearances:

C. P. Reynolds, All Respondents.
W. C. Burger, Louisville & Nashville Railroad.
H. B. Schneiber, Office Price Administrator.
J. F. Gaffney, Jr., Nashville, Chattanooga and St. Louis Ry.
C. S. Blackman, Tennessee Central Railway.
E. J. Meade, Illinois Central Railroad.
E. S. Clements, Southern Railway.

During Nov. 1942, all Tennessee carriers by rail filed new and advanced passenger fare rates applicable to intrastate passenger traffic in Tennessee. The new and proposed

passenger fare rates as compared with the present passenger fare rates are as follows:

[fol. 602]

Types of Passenger Service	In Cents Per Mile Traveled Present Basic Fare	Present Fare Including 10% Ex Parte Rate 148	Proposed Fare
In Coaches			
One Way	1.50	1.65	2.20
15 Day Limit	1.35	1.485	1.98
In Parlor or Sleeping Cars			
30 Day Limit Round Trip	2.25	2.475	2.75
3 Months Limit Round Trip	2.50	2.75	2.75
6 Months Limit Round Trip	2.50	2.75	3.30

These new and advanced passenger fare rates were suspended by the Commission in its order entered November 25, 1942, and this Commission upon its own motion, without formal pleading entered upon a hearing concerning the lawfulness of the advanced passenger fare rates and to prescribe just, and reasonable passenger fare rates for future application.

A full and complete hearing was held before the Commission on May 13, 1943.

In answering a question of the Chairman, Counsel for respondents replied as follows:

> "Mr. Reynolds: * * * I may say that it is not our purpose to introduce a lot of witnesses and figures to show what would be a reasonable rate.
>
> What we propose to do, very briefly, is to give the history of the present rate, of 1.65 cents per mile, and show the Commission that it is a depressed rate, which was put in to meet bus competition primarily; and then to show the Commission also that the rate we propose, the rate of 2.2 cents per mile has been approved by the Interstate Commerce Commission for application all over the country, including points in the south, and that it has also been approved by several of the southern Commissions for intrastate applications in the southern states, and also we wish to show [fol. 603] that 2.2 a mile is much less than the fare in effect during the last World War, and in fact that it is much less than the fare prior to 1933, and that will be done by Mr. Gaffney in his testimony.
>
> In view of the fact that the Commission in Docket 2650, the so-called general passenger fare investiga-

tion, approved a basic fare of 2 cents as reasonable for allocation throughout the entire United States, and in view of the further fact that they included the 10 percent increase in this fare in Ex Parte 148, when it was first heard, and declined to remove it when the case was further heard, we have not felt it necessary to go into any great detail in this hearing as to the reasonableness of the rate."

It was therefore apparent that respondent carriers were depending more upon uniformity than upon the reasonableness of the rates per se, to prove the lawfulness of the new and increased passenger fare rates in Tennessee.

The so-called streamline trains were referred to as the major improvement in passenger transportation yet offered the public and that every convenience and luxury has been installed in these trains such as de luxe coaches, air conditioning, excellent dining cars where delicious meals were served at low prices, all of which is true, but, these trains are primarily for interstate travellers, and in some instances their stops are so arranged that intrastate passengers in Tennessee are not allowed the privilege of riding said streamlined trains. However, the request for increased rates on account of such additional services performed by the carriers should be accompanied by a showing of increased cost and the necessity for greater revenue to maintain their services.

[fol. 604] Respondents offered much testimony showing how expenses of a typical Tennessee railway (N. C. & St. L. Ry.), had increased since 1941. The following table of "Ratios Expenses to Revenue" proves conclusively that revenues show a much greater increase than expenses.

Ratio Expenses to Revenue

	1941	1942	4 mo. 1943
C. N. O. & T. P. Ry.	57.8	53.1	50.9
Southern Ry.	63.3	55.6	52.7
L. & N. RR.	65.3	58.7	55.0
I. C. RR.	72.7	68.2	65.0
G. M. & O. RR.	68.2	62.3	58.3
Tenn. Central Ry.	74.4	74.7	71.6
Clinchfield	41.6	41.9	44.1
N. C. & St. L. Ry.	71.8	63.6	60.5

In 1941 it cost the Nashville, Chattanooga and St. Louis Railway 71.8 cents to earn a dollar, while for the first 4 months of 1943 it cost that carrier only 60.5 cents to earn

a dollar. Considering the increased volume of traffic and the lower transportation cost per dollar of revenue, the gain in Net Railway Operating Income is phenominal, as demonstrated below:

N. C. St. L. Ry. Net Operating Income:

1941	$3,309,419.
4 mo. 1943	2,319,371.

Much statistical information purporting to show that passenger business of respondent lines was handled at a loss was presented. The information would have carried much weight had it allowed credit for both passenger and allied services. As it was, every passenger train expenses was considered but only passenger fares, and no allied service, was credited. However, the following table which does not include allied service shows that any deficit which was [fol. 605] more than eliminated in 1942 was for the first 4 months in 1943 turned into a net which contributed its share to the revenues of the southern district carriers as a whole enabling them to earn a return of more than 7 per cent upon their property investment.

Passenger Revenues

Road	1941	1942	4 months 1943
C. N. O. & T. P. Ry.	$1,859,009	$4,206,668	$2,098,589
Southern Ry.	14,232,779	36,265,338	16,657,904
L. & N. RR.	8,976,429	23,288,244	14,239,382
I. C. RR.	11,491,056	19,941,145	9,476,901
G. M. & O. RR.	619,770	1,361,108	811,790
Tenn. Central Ry.	55,939	187,386	155,758
Clinchfield RR.	58,032	87,422	48,877
N. C. & St. L. Ry.	1,706,194	4,654,317	2,408,897
Totals	38,999,208	89,991,628	45,898,093

Page 3, of Exhibit No. 3, indicated that for the N. C. & St. L. Railway, passenger revenues must be increased 40 per cent over 1941 passenger revenue in order to wipe out a net railway operating deficit from passenger operations. 1942 passenger revenue was increased over 1941 passenger revenue 172.79 per cent. Using the first four months of 1943 as a guide passenger revenue for 1943 would exceed 1941 by 323.56 per cent. Add to these increases the revenues derived from allied services and it will be made apparent that a typical Tennessee line, as selected by respondents that is the N. C. & St. L. Railway, is not in need of additional passenger revenue.

Information requested by the Commission which was furnished by the respondents subsequent to the hearing, indicates that by including allied service revenue, as well as passenger revenue, the net Railway Operating deficit-passenger for 1941 was $675,092, while for 1942 it had a net of $709,082, or an increase of $1,384,174, in net Railway Operating Income-passenger.

[fol. 606] We are Therefore of the Opinion and Find, That the advanced rates suspended by the Commission in its order in this cause, entered November 25, 1942, were not proven to be just, reasonable or non-compensatory.

It is Therefore Ordered, That said respondents be and they are hereby notified and required to cancel the suspended rates leaving in full force and effect those rates in effect immediately prior to the date of suspension, namely:

Types of Passenger Service	In Cents Per Mile Traveled
In Coaches	
One way	1.65
15 day limit	1.485
In Parlor or Sleeping Cars	
30 day limit round trip	2.475
3 months limit round trip	2.75
6 months limit round trip	2.75

We Find these fares to be just, reasonable and compensatory, and,

It is Further Ordered, That the fares herein approved shall remain in effect until 6 months after the termination of the present war, unless sooner modified by appropriate order of this Commission, and,

It is Further Ordered, That 6 months after the termination of the present war increases permitted in this Commission's order entered May 12, 1942 will expire, and

It is Further Ordered, That jurisdiction of this proceeding should be and it is hereby retained for the purpose of [fol. 607] entering such order or orders as the Commission may find to be just, reasonable and proper.

Porter Dunlap, Chairman. Leon Jourolmon, Jr., Commissioner. John C. Hammer, Commissioner.

Nashville, Tenn., Aug. 30, 1943.

[fol. 608] BEFORE INTERSTATE COMMERCE COMMISSION

In the Matter of PASSENGER FARES AND CHARGES FOR INTRASTATE TRAFFIC BETWEEN POINTS IN TENNESSEE

ANSWER TO PETITION ON BEHALF OF RAILROADS OPERATING IN THE STATE OF TENNESSEE—September 23, 1943

[fol. 609] Comes now the Railroad and Public Utilities Commission of the State of Tennessee and registers its objection to the petition dated September 8, 1943, in behalf of railroads operating in the State of Tennessee, in which petition petitioners pray that the Interstate Commerce Commission institute an investigation with respect to any fares and charges required to be observed for the intrastate transportation of passengers within the State of Tennessee as a result of an order of the Tennessee Commission entered August 30, 1943, which said order is set out in detail as an appendix to the petition.

We quote Headnote 2, of a decision of the Supreme Court, (Georgia Public Service Commission et al., v. United States [fol. 610] of America et al., 283 U. S. 765-775):

> "It is true that when state rates are assailed on the ground that they result in undue prejudice to interstate shippers or discriminate against interstate commerce, the Commission must determine whether the existing interstate rates are reasonable, as it may not require intrastate rates to be raised above a reasonable level. Virginia Corp. Commission v. Aberdeen & R. R. Co. 136 Inters. Com. Rep. 173, 180. But the reasonableness of the interstate rates had already been found when they were established in the earlier stage of the proceedings; and at those hearings the Georgia Commission and the Highway Board were represented. Nearly eighteen months had elapsed since the original order, but no evidence was offered at the supplemental hearing to show that conditions had so changed since the interstate rates were prescribed as to require reconsideration of the issue. The appellants' objection to the procedure is unfounded."

Our order as heretofore referred to show conclusively that petitioners made no attempt to prove the reasonableness of the rate.

It is evident that the Interstate Commerce Commission's permissive order as referred to on page 5 of petition on behalf of railroads operating in Tennessee was based upon *conditions prior to January 21, 1942. Conditions subsequent to January 21, 1942 have so changed as to require reconsideration of any issue involving passenger fare rates during 1943.*

Passenger fare revenues of petitioners for 1942 were increased 130.75 percent over 1941.

[fol. 611] Passenger fare revenues of petitioners for 7 months in 1943 were increased 313.16 percent over corresponding period of 1941.

Passenger fare revenues of petitioners for 7 months of 1943 were increased 113.29 percent over corresponding period of 1942.

Ratios of expenses, maintenance and transportation to revenues have been materially decreased, proving that increases in revenues far exceeded increases in expenses.

In 1941 carriers in southern district earned 4.35 percent upon property investment. For 12 months ending June 30, 1943, same carriers earned 7.01 percent upon property investment.

Take two typical Tennessee lines. In the first 3 months of 1943, The Nashville, Chattanooga and St. Louis Railway passenger revenues exceeded its passenger revenues for the entire year of 1941. In the first 2 months of 1943, the Tennessee Central Railway passenger revenues exceeded its passenger revenues for the entire year of 1941.

All of the above and foregoing proves conclusively that this Commission's order of August 30, 1943, is more than justified.

We earnestly assert and contend that the order of the Tennessee Commission places no burden upon interstate commerce and that it does prescribe just and reasonable rates which if adopted by all carriers by rail in Tennessee [fol. 612] on both interstate and intrastate passenger traffic would earn for said carriers a more than reasonable return upon the value of its property investment.

We also earnestly assert and contend that the petition dated September 8, 1943, on behalf of the railroads operating in the State of Tennessee should be denied.

For further details see appendix attached hereto, which said appendix is hereby referred to and made a part hereof.

Wherefore, The Railroad and Public Utilities Commission of the State of Tennessee prays that the Interstate Commerce Commission will deny the petition of railroads operating in Tennessee, dated September 8, 1943.

Respectfully submitted, Porter Dunlap, Chairman; Leon Jourolmon, Jr., Commissioner; John C. Hammer, Commissioner.

Nashville, Tenn., Sept. 22, 1943.

[fol. 613] *Certificate of Service*

This is to certify that I have served the foregoing document upon Prentice M. Brown, Price Administrator, and Attorneys for carriers filing the petition.

J. O. Hendley, Rate Expert.

Nashville, Tenn., Sept. 22, 1943.

[fol. 614]

Passenger Revenues

Road	1941	1942	7 mo. 1943	%1942 over 1941
C.N.O. & T.P. Ry	$1,859,009	$4,206,668	$3,661,204	126.29
Southern Ry	14,232,779	36,265,338	32,590,757	154.8
L. & N. RR	8,976,429	23,288,244	26,042,328	159.44
Illinois Cent	11,491,056	19,941,145	18,195,996	73.54
G.M. & O. RR	619,770	1,361,108	1,545,134	119.62
Tenn. Central	55,939	187,386	333,923	234.98
Clinchfield RR	58,032	87,422	104,179	50.64
N.C. & St.L. Ry	1,706,194	4,654,317	4,706,862	172.79
Total	38,999,208	89,991,628	87,180,383	130.75

Road	7 mo. 1941	7 mo. 1942	7 mo. 1943	% 1943 over 1941	1942
C.N.O.T.P. Ry	$1,107,995	$1,804,725	$3,661,204	230.44	102.87
Southern Ry	7,490,622	16,213,483	32,590,757	335.09	101.00
L. & N. RR	4,796,147	10,579,521	26,042,328	442.98	146.16
Illinois Cent	6,334,978	9,788,117	18,195,996	187.23	85.99
G.M. & O. RR	326,292	557,051	1,545,134	373.54	177.38
Tenn. Central	32,013	67,214	333,923	943.08	396.80
Clinchfield	32,794	39,038	104,179	217.68	166.87
N.C. & St.L.	979,892	1,824,409	4,706,862	380.34	157.99
Total	$21,100,733	$40,873,558	$87,180,383	313.16	113.29

[fol. 615]

Ratio to Revenues

Road	1941 Expenses	1941 Maintenance	1941 Transportation	1942 Expenses	1942 Maintenance	1942 Transportation	7 mo. 1943 Expenses	7 mo. 1943 Maintenance	7 mo. 1943 Transportation
C.N.O.TP	57.8	29.0	24.2	53.1	26.0	23.0	52.1	25.5	22.7
Southern	63.3	27.6	31.1	55.6	24.7	26.8	52.6	24.2	24.5
L. & N.	65.3	29.3	31.2	58.7	25.1	29.2	55.3	23.9	27.2
I.C. RR.	72.7	32.8	34.2	68.2	34.3	29.2	66.6	33.7	28.5
G.M. & O.	68.2	30.0	28.9	62.3	28.6	26.9	61.1	29.4	25.6
Tenn. Cent.	74.4	33.4	33.8	74.7	36.1	32.5	67.7	33.0	28.9
Clinchfield	41.6	19.0	18.4	41.9	18.6	19.4	46.4	22.9	19.5
N.C. St.L.	71.8	26.5	37.4	63.6	26.1	31.6	61.7	27.6	28.8

Passenger Revenues

N.C. & St.L. Ry.	Year 1941	$1,706,194	3 mo. 1943	$1,825,330
Tenn. Central	Year 1941	55,939	2 mo. 1943	77,586

Rate of return on property investment Southern District year 1941 ..... 4.35
12 mo. ending June 30, 1943 ..... 7.01

[fol. 616] At a Session of the Interstate Commerce Commission, Division 1, Held at Its Office in Washington, D. C., on the 13th Day of October, A. D. 1943

No. 29037

Tennessee Intrastate Fares

Order Instituting Investigation

It appearing, That a petition has been filed on behalf of the Alabama Great Southern Railroad Company and other common carriers by railroad operating in the State of Tennessee averring that in Ex Parte No. 148, *Increased Railway Rates, Fares, and Charges, 1942,* 248 I. C. C. 545, the Commission authorized certain increases in interstate rates, fares and charges throughout the United States, which have been established; that on August 1, 1942, the order therein was modified so as to authorize the railroads operating in southern passenger association territory to apply the increase of 10 percent approved in said order to a basic coach fare of 2 cents per mile on the lines of said railroads, pursuant to which authority fares for interstate transportation of 2.2 cents per mile for one-way travel in coaches were established on October 1, 1942; that on the latter date petitioners established, among others, fares for interstate transportation of 1.98 cents per mile for round-trip travel in coaches and 2.75 cents per mile for round-trip travel in sleeping or parlor cars; and that the Railroad and Public Utilities Commission of Tennessee by order dated August 30, 1943, refused to authorize or permit the application to the transportation of passengers traveling intrastate in Tennessee of fares and charges corresponding to those established for interstate application on October 1, 1942;

It further appearing, That petitioners allege that the refusal of the Railroad and Public Utilities Commission of Tennessee to permit the application to the transportation of passengers traveling intrastate in Tennessee of fares and charges corresponding to those established for interstate application on October 1, 1942, causes undue and unreasonable advantage, preference, and prejudice as between persons and localities in intrastate commerce, on the one hand, and interstate commerce, on the other hand,

and undue, unreasonable and unjust discrimination against interstate commerce;

And it further appearing, That said petition brings in issue fares and charges made or imposed by authority of the State of Tennessee:

It is ordered, That in response to said petition an investigation be, and it is hereby, instituted, and that a hearing be held therein for the purpose of receiving evidence from the respondents hereinafter designated and any other persons interested to determine whether the refusal of the Railroad and Public Utilities Commission of Tennessee to authorize or permit the application to the transportation of passengers traveling intrastate in Tennessee of [fols. 617-1075] fares and charges corresponding to those established for interstate application on October 1, 1942, causes any undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce, on the one hand, and interstate or foreign commerce, on the other hand, or any undue, unreasonable, or unjust discrimination against interstate or foreign commerce; and to determine what fares and charges, if any, or what maximum or minimum or maximum and minimum fares and charges, shall be prescribed to remove such advantage, preference, prejudice or discrimination, if any, as may be found to exist.

It is further ordered, That all common carriers by railroad operating within the State of Tennessee subject to the jurisdiction of this Commission, be, and they are hereby, made respondents to this proceeding; that a copy of this order be served upon each of said respondents; and that the State of Tennessee be notified of this proceeding by sending copies of this order and of said petition by registered mail to the Governor of said State and to the Railroad and Public Utilities Commission of Tennessee at Nashville, Tenn.

It is further ordered, That notice of this proceeding be given the public by depositing a copy of this order in the office of the Secretary of the Commission, at Washington, D. C.

And it is further ordered, That this proceeding be assigned for hearing at a time and place hereafter to be named.

By the Commission, Division 1.

W. P. Bartel, Secretary. (Seal.)

[fol. 1076] BEFORE THE INTERSTATE COMMERCE COMMISSION

Docket No. 29037

Tennessee Intrastate Fares

PETITION ON BEHALF OF THE RAILROAD AND PUBLIC UTILITIES COMMISSION OF THE STATE OF TENNESSEE FOR RECONSIDERATION OF THE COMMISSION'S REPORT DECIDED MARCH 25, 1944 AND SERVED ON THE PARTIES ON APRIL 1, 1944—Filed April 26, 1944

[fol. 1077] Comes now the Railroad and Public Utilities Commission of the State of Tennessee, a protestant in the above styled proceeding, and respectfully requests the Commission, as provided in rule No. 101, of the General Rules of Practice before the Commission, to reopen same for the purpose of reconsidering and changing its findings and decision therein, and for cause states:

Specification of Error No. I. The petitioner herein specifies that the third specific finding and conclusion of the Commission, on sheet 20, is in error, said finding being unsupported by the evidence in the cause, and consequently any order based upon said finding would be unconstitutional. Said finding is in the following terms:

"The conditions affecting the one-way and round-trip transportation of passengers in coaches within [the State [fol. 1078] of Tennessee], and the round-trip transportation of passengers in sleeping and parlor cars within * * * Tennessee, intrastate on the one hand, and interstate to, from, and through [said State] on the other, are substantially similar."

In lieu of the foregoing erroneous and incorrect finding, petitioner respectfully requests that the Commission make a substitute finding, as follows:

"Upon this record it appears that upon the average there is a substantial difference in the service and convenience accorded interstate passengers and that accorded intrastate passengers within the State of Tennessee, and that the services and conveniences accorded intrastate passengers are inferior to those accorded interstate passengers."

The following portions of the record are relied upon to support this requested finding: Tr. pp. 258-268; Tr. pp. 231-241; Exhibit 11, pp. 7, 8, 9, 10, 11, 12, and 13; Exhibits 9 and 10; Tr. pp. 224-227.

Specification of Error No. 2. The petitioner herein specifies that the fourth specific finding and conclusion of the Commission, on Sheet 21, is erroneous and contrary to the proof and wholly at variance with the facts disclosed of record, and consequently any order based upon said finding would be unconstitutional. Said finding is in the following terms:

[fol. 1079] "Interstate passengers in [Tennessee] travel in the same trains and generally in the same cars with intrastate passengers, but are forced to pay higher fares than the intrastate passengers for like services, to the undue and unreasonable advantage and preference of the intrastate passengers and the undue and unreasonable disadvantage and prejudice of the interstate passengers."

Point No. 1. In lieu of the foregoing erroneous and incorrect finding, petitioner requests that the Commission make a substitute finding, as follows:

"All trains operated by respondent railroads are not available to interstate and intrastate passengers alike; interstate and intrastate passengers do not in all cases ride in the same trains nor in the same cars, and do not have the same facilities available to and used by both. The respondents provide four trains which operate through and within the State of Tennessee and make only one scheduled stop within the State, these being *de luxe* trains having the highest grade of service and facilities. On the other hand a considerable proportion of the service rendered within the state is wholly for intrastate passengers, such services being rendered in mixed trains; that is to say, trains consisting of a large number of freight cars with passenger service limited to a sub-standard, open-vestibule [fol. 1080] coach which is also used as quarters for the train crew in lieu of a caboose.

"Passenger trains are being operated through the State in many instances carrying more passengers than the seating capacity of the cars can accommodate and numerous

passengers are having to stand. Relatively speaking, the interstate passengers travel considerable distances and the average interstate journey is much longer than the average intrastate journey. Passengers traveling long distances have more frequent opportunities under crowded train conditions to find seats as local passengers get on and off. The necessary inference to be drawn from these facts is that the ratio of intrastate standees to intrastate passengers per mile is higher than the ratio of interstate standees to to interstate passengers per mile."

The following portions of the record are relied upon to support this requested finding: Tr. pp. 258-268; Tr. pp. 231-241; Tr. pp. 224-227; Exhibits 9, 10, and 11.

Point No. 2. In the alternative, in lieu of the foregoing erroneous and incorrect finding, petitioner requests that the Commission make a substitute finding, as follows:

"No persons who pay the higher interstate fares and no localities have appeared herein to complain of undue [fol. 1081] advantage, preference, and prejudice, and as far as this record shows none have complained to respondents. Respondents do not seek relief for any particular persons or places, but seek a State-wide order. There is no evidence in this record to establish that the difference in interstate and intrastate passenger fares constitutes a source of undue disadvantage to one party and of undue advantage to any other party. There is no evidence in this record showing that any person who pays the interstate fares would be benefited by an increase in the intrastate fares. No locality in interstate commerce is shown to be injured by the disparity nor is it shown that any locality would be benefited by an increase in the intrastate fares."

No portions of the record are relied upon to support this statement as this statement is based upon a complete absence or lack of proof, rather than upon any affirmative proof in the record.

In support of its request for said substitute finding of fact and conclusion of law, the said petitioner cites the following decisions of the Interstate Commerce Commission and the Supreme Court of the United States:

Passenger Fares and Charges for Intrastate Traffic in Georgia, 214 I. C. C. 567.

[fol. 1082] *Wisconsin Railroad Commission* v. *Chicago B. & Q. R. Company*, 257 U. S. 563.
New York v. *United States*, 257 U. S. 591.
Barrett Company v. *Atchison, T. & S. F. Ry. Company*, 172 I. C. C. 319, 333 334.
Intrastate Class Rates in New Jersey, 203 I. C. C. 357.
Georgia Veneer and Package Company v. *Atlantic Coast-line R. Company*, 206 I. C. C. 566.
Anchor Storage Company v. *Alton R. Company*, 211 I. C. C. 307.
Basic Dolomite, Inc. v. *Ann Arbor R. Company*, 203 I. C. C. 378.
Utah Edible Livestock Rates and Charges, 206 I. C. C. 309.

Specification of Error No. 3. The petitioner herein specifies that the fifth specific finding and conclusion of the Commission, on sheet 21, is a wholly erroneous and improper finding inasmuch as there is no evidence in the record to support same, and consequently any order based upon said finding would be unconstitutional. Said finding is in the following terms:

"Respondents' revenues under the lower intrastate fares are less by at least * * * $525,000 in Tennessee than [fol. 1083] they would be if those fares were increased to the level of the corresponding interstate fares, and traffic moving under these lower intrastate fares is not contributing its fair share of the revenues required to enable respondents to render adequate and efficient transportation service."

In particular the last phrase of this finding is objected to, as there is no evidence in the record to the effect that traffic moving under the intrastate fares in Tennessee is not contributing its fair share of the net revenues required to enable the rail carriers to properly render an adequate and efficient transportation service.

Point No. 1. In lieu of the foregoing erroneous and incorrect finding, which was made by the Commission as above, petitioner respectfully requests that the Commission make a substitute finding, as follows:

"For the year ending September 30, 1943, the rate of return (before Federal income taxes) of the eight principal

respondents on their investment in railway property used in transportation service plus cash, materials and supplies was as follows:

"C. N. O. & T. P. Ry., 17.2 percent; Southern Ry. Co., 15.1 percent; Louisville and Nashville R. R., 15.7 percent; Illinois Central, 8.1 percent; Gulf, Mobile and Ohio, 10.6 [fol. 1084] percent; Tennessee Central Ry., 11.5 percent; N. C. & St. L. Ry., 12.4 percent; Carolina, Clinchfield and Ohio Ry., 8.5 percent. On the same basis the total rate of return for all eight of said carriers was 12.8 percent. During the year ending September 30, 1943, the carriers operating in Tennessee earned in excess of a fair return, and do not need the revenue from the requested increase of intrastate fares in order to enable them to earn a fair return."

The portion of the record which sustains said findings is as follows: Exhibit 15.

There is no evidence in the record to indicate that the revenues from the present intrastate passenger fares are less than those required to enable respondents to render adequate and efficient transportation service, or that there is any deficiency in respondents' revenues from their passenger and freight traffic considered as a whole.

The point to this objection is that the Commission has misconceived the meaning of the limitation to which 13th Section orders are subject, namely: that before the Commission can exercise the power and authority to set aside an intrastate rate because of the fact that such rate discriminates against interstate commerce, the facts in evidence in the record must sustain a showing that the carriers [fol. 1085] are not making an adequate return, and that by reason of the fact that such carriers are not making an adequate return the intrastate rates are not producing a fair proportionate share of the revenues of the carrier. There was no evidence in the present case upon which such a finding could have been predicated.

Point No. 2. As an additional substitute finding the petitioner requests the following:

"The evidence of record in this case is conclusive and undisputed that since 1941 both the average number of passenger cars in each passenger train and the average

number of passengers in each passenger car on the six major railroads operating in Tennessee have shown a large increase. The number of passenger cars per train has increased in 1942 over 1941 for the Southern Railway by 20 percent; for the Louisville and Nashville R. R. Co., by 11 percent; for the Tennessee Central, by 36 percent; and for the N. C. & St. L. Ry., by 10 percent; the average number of passengers in each passenger car have increased for the same period as follows: C. N. O. & T. P. Ry., 102 percent; Southern Railway Co., 71 percent; Louisville and Nashville R. R., 71 percent; Tennessee Central Ry., 140 percent; N. C. & St. L. Ry., 87 percent. This has resulted in a large increase in per car earnings for 1942 over those of 1941. The average revenue per passenger car mile in cents has increased as follows: For the C. N. O. & T. P. [fol. 1086] Ry., from 25 cents to 45 cents, or an increase of 85 percent; for the Southern Railway Co., from 29 cents to 46 cents, or an increase of 56 percent; for the Louisville and Nashville R. R., from 22 cents to 37 cents, or an increase of 65 percent; for the Illinois Central, from 23 cents to 34 cents, or an increase of 44 percent; for the Tennessee Central Ry., from 11 cents to 25 cents, or an increase of 116 percent; for the N. C. & St. L. Ry., from 21 cents to 37 cents, or an increase of 76 percent. For the entire Southern Region the first eight months of 1943 reflect a similar increase over 1942 as follows: The average revenue per passenger car mile in the Southern Region increased from 46 cents to 55 cents, or a 19 percent increase. In each instance above the earnings have been computed on the basis of 1.65 cents per passenger mile, the present intrastate fare in Tennessee, in order to show the increase, while the former average passenger car mile revenues used are based on the actual average revenues as shown in the reports of the carriers, and vary from 1.60 cents to 2.01 cents per mile, which latter figure is the average revenue per passenger mile for the entire Southern Region for 1942."

In support of its request for the foregoing substitute finding, the petitioner relies on the following portion of the record: Exhibit 11, pp. 3, 4, and 5.

[fol. 1087] Specification of Error No. 4. Said petitioner specifies that specific finding and conclusion number 6, sheet 21, is in error, and constitutes an incorrect and im-

proper finding, inasmuch as it is not supported by the facts of record in the case, and it is accordingly unconstitutional, as would be also any order pursuant thereto. The finding referred to is in the following terms:

"The maintenance of intrastate one-way and round-trip coach fares in * * * Tennessee, and of intrastate round-trip fares applicable in sleeping and parlor cars in * * * Tennessee, to the extent that such fares are on a lower level than the corresponding interstate fares, causes and will cause undue and unreasonable advantage to and preference of persons in intrastate commerce, undue and unreasonable disadvantage to and prejudice against persons in interstate commerce, and undue, unreasonable, and unjust discrimination against interstate commerce; and this unlawfulness should be removed by increasing the aforesaid intrastate fares in the [State of Tennessee] to the level of the corresponding interstate fares contemporaneously maintained by respondents to, from, and through such [State]; provided, that the aggregate charge made by any of respondents for the intrastate transportation in [such State] shall not exceed the aggregate charge made for like accommodations and for a like [fol. 1088] distance by the same respondent for interstate transportation to, from, or through such State."

Petitioner alleges that said finding is erroneous inasmuch as there is no evidence in the record to support such finding, whence said finding contravenes the Tenth Amendment to the Constitution of the United States, said Amendment being in the following terms:

"The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

In support of said objection the petitioner also relies upon the following decision of the United States Supreme Court: *St. Joseph Stockyards Company* v. *United States*, 298 U. S. 38, 80 L. ed. 1033.

Specification of Error No. 5. The petitioner herein specifies that the following finding and conclusion of the Commission is in error, said finding being unsupported by the evidence in the cause, and consequently any order based

upon said finding would be unconstitutional; said finding is on sheets 19 and 20, and is in the following terms:

"Upon the records in the instant proceedings we can find no warrant for changing our views that a basic coach fare of two cents per mile, plus an additional ten percent for the duration of the war, is reasonable for general application."

[fol. 1089] The petitioner further specifies that the following finding and conclusion of the Commission is in error, said finding being unsupported by the evidence in the cause, and consequently any order based upon said finding would be unconstitutional; said finding being on sheet 10, and in the following terms:

"The record does not warrant any modification of our conclusion in the report on further hearing in *Ex Parte* No. 148 with respect to the passenger fares of these respondents."

Point No. 1. The foregoing findings were made because of the fact that the Commission recognized the following prerequisite, which it stated in its order, on sheet 4, as follows:

"As a basis for a finding of violation of Section 13 (4) of the Act, the interstate fares must be shown to be reasonable."

Georgia Public Service Commission v. *United States*, 283 U. S. 765.

United States v. *Louisiana*, 290 U. S. 70.

Responsive to this prerequisite, the Commission considered the reasonableness of the interstate fares, and reached the conclusions set out above. However these conclusions were not founded nor grounded upon any evi-[fol. 1090] dence in the record, as no evidence in the record was introduced by respondents, or by the protestants relative to the reasonableness of the interstate fares.

The manner in which the interstate fares were established is set out in the report on sheet 3 as follows:

"On July 14, 1942, the railroads operating in Southern territory filed with us a petition for authority to increase their lower fares for interstate one-way transportation in coaches in that territory to 2.2 cents a mile, the basis

of the coach fares then in effect generally throughout the remainder of the United States. Having found in *Passenger Fares and Surcharges, supra,* that 2 cents per mile was a reasonable basic coach fare for application on railroads generally throughout the country, including the lines of petitioners, we authorized petitioners by our order of August 1, 1942, to apply the increase of 10 percent approved in *Ex Parte* No. 148 to a basic fare of 2 cents per mile, and modified accordingly the original order in the latter proceeding."

The method used by the Commission in increasing the basic interstate fares in the South to 2.2 cents per mile is improper, erroneous, and was made without due process of law. No hearing whatever was accorded any parties who might have wished to protest said increase in basic interstate fares.

[fol. 1091] A true, correct and exact statement of what happened is hereafter set out, and petitioner requests that the Commission make the following substitute finding:

"The basic fare of 1.5 cents per mile in the South was approved by the Commission on February 28, 1936, in its decision in Docket No. 26550, *Passenger Fares and Surcharges,* 214 I. C. C. 174. A 10 percent increase, bringing the fare to 1.65 cents per mile, was published by the carriers under authority of an order of the Commission dated January 21, 1942, confirmed by the decision in *Ex Parte* No. 148, *Increased Railway Rates, Fares, and Charges,* 1942, 248 I. C. C. 545. The Tennessee intrastate fare was increased by the petitioner Commission to the 1.65 cent level on February 10, 1942.

"The railroads in Southern Passenger Association territory on July 14, 1942, filed petition praying modification of the order in Docket No. 26550, seeking authority to increase Southern coach fares to 2.2 cents per mile. By order dated August 1, 1942, the Commission stated that the petition was denied. In the same order, however, the Commission granted the prayer of the petition in an order made under *Ex Parte* No. 148, modifying the former order in *Ex Parte* No. 148 by authorizing Southern carriers 'to apply the increase of 10 percent approved in said order to a basic fare of 2 cents per mile of said petitioners.'"

[fol. 1092] The procedure thus followed by the Commission is irregular, and does not partake of the dignity required of hearings under the Interstate Commerce Act. The fare was increased wholly without any evidence to support same, as such an increase was not in issue in that cause.

In the petition filed by all Class I Railroads in the United States in *Ex Parte* No. 148, the carriers did not pray for an increase of fares from 1,5 cents per mile to 2.2 cents per mile in or throughout the South. Instead the carriers specifically prayed for authority to make increases as follows: *Passenger Fares, a uniform increase of 10 percent in all fares, as published in passenger tariffs.* This petition in *Ex Parte* No. 148 was never modified, amended, nor changed by the carriers, and the authority granted on August 1, 1942, in that cause to increase fares in the South to 2.2 cents is accordingly illegal as this issue was not involved in that cause, nor did any parties have notice that such an increase was in issue.

Point No. 2. Ex Parte No. 148 was a cooperative procedure, by which is meant that representatives of the State Commission throughout the United States were invited to sit with the Commission, and consult with it upon the issues, findings, and conclusions to be incorporated in reports and orders. Said cooperative procedure was carried out under the cooperative agreement between the Interstate Commerce Commission and the National As- [fol. 1093] sociation of Railroad and Utilities Commissioners, under which all such cooperative proceedings are conducted.

The record in this case discloses that the cooperating State Commissioners were not called by the Interstate Commerce Commission when it entered its order of August 1, 1942, modifying its original order in *Ex Parte* No. 148, so as to permit the carriers operating throughout the South to apply the 10 percent increase to a basic fare of 2 cents per mile on the line of said railroads. Instead of a 10 percent increase upon the existing published tariffs, carriers throughout the South were actually allowed an increase of seven-tenths of a cent per mile, or a 46.66 percent increase.

Said procedure of the Commission was made without pleadings on the part of the parties, without proof to sup-

port same, and with no opportunity on the part of protesting parties to resist same, and is accordingly illegal, and erroneous. It was also in violation of the cooperative agreement under which cooperative proceedings are conducted, and consequently any findings, conclusions, and orders based upon said action of the Commission are erroneous, and unconstitutional.

Specification of Error No. 6. The petitioner specifies that the failure of the Commission to make proper findings relative to the Wartime Stabilization Program, declared by and promulgated by the Leglislative and Executive Branches of the Federal Government, is in error.

[fol. 1094] Accordingly petitioner respectfully requests that the Commission make an additional or substitute finding, as follows:

"The Wartime Stabilization Program is based upon the policy set forth in the Emergency Price Control Act of 1942, 50 U. S. C. A. App. 901 et seq., and the Stabilization Act of October 2, 1942, 50 U. S. C. A. App. 961 et seq., Section 1 (961) of the latter Act sets forth the policy of Congress as follows:

" 'Such stabilization shall so far as practicable be on the basis of the levels which existed on February 15, 1942. The President may * * * thereafter provide for making adjustments * * * to the extent that he finds necessary to aid in the effective prosecution of the war or to correct gross inequities.'

"Thereafter the President of the United States issued a Directive in which all regulatory agencies, including the petitioner Railroad and Public Utilities Commission of the State of Tennessee, were directed to allow no rate or fare increases unless the *necessity* for such increases be shown. In obedience to the statutes enacted and to the Directive of the President, the Railroad and Public Utilities Commission of the State of Tennessee refused to allow increases in the fares of the respondent railroads, which had failed to show any true necessity for such an adjustment. In the instant case the Tennessee railroads clearly do not need the added revenues from the increased intrastate fares."

[fol. 1095] The findings of the Commission in this case clearly show that the fare of 1.5 cents per mile was the

proper fare under the experiments made prior to the war, for a maximum fare which would create traffic during a peacetime period. The order of the Commission shows that a higher fare was not practical at such a time because of competition from motor carriers and privately operated automobiles. Accordingly, in allowing the railroads to increase their rates during wartime conditions, when the railroads do not need added revenues, to the same extent that they have needed them during peacetime, and when the lack of competition from motor vehicles makes the increases possible, the Tennessee Commission would have been allowing the railroads to make unreasonable profits by taking advantage of public or national need for transportation facilities during the war. The Emergency Price Control Act of 1942 expressly declared that prevention of such unreasonably high profits is in the interest of the national defense and security, and necessary to the effective prosecution of the war.

Under these circumstances the action of the Railroad and Public Utilities Commission of Tennessee was correct and the report of the Commission should be modified and the Commission's approval of the Tennessee Commission's action given.

Specification of Error No. 7. The petitioner herein specifies that the report and findings of the Commission are [fol. 1096] erroneous and improper, inasmuch as they fail to reflect the true state of the evidence and proof in the record, and fail to show that the respondent carriers are earning excess profits. Consequently any order based upon said report and findings would be unconstitutional.

The point to which this objection is directed is that the National Transportation Policy, as stated in the Interstate Commerce Act and particularly Section 15a (2) thereof should be read in the light of other Legislative acts which enunciate national policy. Legislation has been enacted which provides for excess profits taxes and this tax embodies a legislative pronouncement of national policy. The basic purpose of a tax on excess profits in wartime is to provide that as nearly as possible justice may be done to the entire citizenship, and that where extraordinarily large profits are made as a result of the war program, a large proportion of them (in fact between 80 and 90 percent) must be shared with the Nation as a whole. In its failure

to except railroads from the application of such excess profits taxes, the Congress made a declaration of national policy and wrote into The National Transportation Policy a declaration by inference, that the development and preservation of a national transportation system by rail, highway, and water does not require nor call for excessively high [fol. 1097] profits for the railroads during the period of war, as compared with the average earnings for the base period for the years from January 1, 1936, to January 1, 1940. This period is the base by which excessive profits are to be measured in order that excess profits taxes may be imposed.

The record in the present case shows that for the base years referred to there were net railway operating deficits from the passenger operations of the eight principal respondents herein, these deficits being in the following amounts: 1936, deficit, $19,290,859; 1937, deficit, $17,838,577; 1938, deficit, $19,566,771; and 1939, deficit, $19,972,298. Accordingly the average net railway operating deficit for these four base years was approximately $19,167,126. The record also shows that the net railway income from passenger operations of these eight principal respondents for the year 1942 was $11,802,470. Accordingly the record indicates that the excess profits derived from the war by these eight principal respondents are more than $30,000,000. Under these circumstances any additional amount which the said carriers would derive as the result of an increase of intrastate fares would simply enhance these excessive earnings and unreasonable profits of the carriers.

The legislative pronouncement as to fair profits and fair returns in wartime is found in the Excess Profits Tax Act of 1942, and by this criterion the carriers in Tennessee [fol. 1098] are earning from their passenger operations far in excess of a fair and adequate return, and indeed are earning excessive profits.

Specification of Error No. 8. The petitioner herein specifies that the report, findings and conclusions of the Commission are erroneous in the following respects:

The petitioner made the contention on the hearing that the added expense of operation of the respondents arising in connection with their movement of troop trains is interstate in nature, and that such increases in the cost of the interstate traffic may not properly be used to support a

finding that intrastate traffic does not produce its fair share of the earnings required by respondent carriers to enable them to provide adequate and efficient railway transportation service.

The Commission ignored this contention, and the evidence introduced to support same. However, as to the same contentions made by the Alabama Commission in the companion Alabama case, which is treated in the same report and findings, the Commission made the following finding, conclusion, and statement on sheet 15:

"Protestant points out that much of the added expense of the operations of some of respondents arises in connection with or is due to the movement of troop trains, and that these are interstate movements; and it contends that civilian intrastate fares should not be increased to assist in bearing that burden. To concede the correctness of this [fol. 1099] contention might be to impair the effectiveness of the provisions of section 15a relative to adequate and efficient railway service, and to defeat the national transportation policy as declared in 54 Stat. L. 899, relative to developing, coordinating, and preserving a national transportation system adequate to meet the needs of the commerce of the United States, of the postal service, and of the national defense, and requiring that all of the provisions of the Interstate Commerce Act shall be administered and enforced with a view to carrying out the stated declaration of policy."

The foregoing finding is accepted as the finding which the Commission would apply to the same contention in Tennessee and petitioner specifies that this finding is erroneous and not supported by the law and facts, and accordingly any order based upon said finding would be unconstitutional and in violation of the Tenth Amendment to the Constitution of the United States. It is necessary before the Interstate Commerce Commission can act to set aside intrastate rates as a burden upon interstate commerce, that a finding must be made, supported by the record, that these rates do not contribute their fair share of the cost of rendering adequate and efficient transportation service. The record in this case discloses however that the expense of transportation service is high at present because of the large expense of rendering the

interstate troop train service; accordingly this is not a part of the expense which can be charged lawfully to the fair share of intrastate expense.

[fol. 1100] The Commission made the following findings on sheets 8 and 9 as to increased expenses due to movement of troop trains:

"Wartime operations have placed added burdens on the passenger departments and facilities of respondents and resulted in unusual expenses, such as for safeguarding operations and providing expedited movements of troop trains. For example, during November 1943, the Southern operated 353 troop trains, and 1,178 cars with troops were operated by it in regular trains. A special representative of the railroad rides each troop train. Much dead-head movement of equipment is necessary in assembling cars for these troop movements and in returning them to the points where they will again be needed, and additional terminal switching costs are incurred. Troop movements are given preference over all freight trains and certain passenger trains, and this occasions delays to freight and passengers trains, with resulting increased costs in wages and fuel therefor. Some of these expenses are reflected in the freight accounts of respondents. Their general offices must be kept open in some instances 24 hours a day and in others from 12 to 16 hours in order to make provision for troop movements, thus requiring the services of a greater number of employees and resulting in increased expenses. On troop movements the Government does not pay the full published fare, but is allowed a discount of 5 percent from commercial fares, except where the movement is by a route over which land-grant deductions are applicable, in which event the deduction allowed is 50 percent of the commercial fare, plus a further deduction of 3 percent. There is no land-[fol. 1101] grant mileage in North Carolina, Kentucky, or Tennessee, but there is considerable such mileage in Alabama."

The record in the cause sustains the fact that such increased expenses have been incurred, and also shows that the entire movement of troop trains in Tennessee was interstate, there being virtually no intrastate movement of troop trains within the State. The portion of the record relied upon to establish this fact is as follows: Tr. pp. 287-288.

For the foregoing reasons all of such increased expense is properly chargeable to interstate operations, and intrastate operation should not be burdened by this additional expense as this is not a part of their fair share of the earnings required by the respondent carriers to enable them to provide adequate and efficient railway transportation service, both interstate and intrastate.

Specification of Error No. 9. The petitioner herein specifies that the following finding of the Commission, on sheet 13, is in error, said finding being unsupported by the evidence in the cause, and consequently any order based upon said finding would be unconstitutional:

"Respondents in [Tennessee] are engaged in the handling of both intrastate and interstate passengers. Such passengers are carried on the same trains and generally in the same cars, but the interstate passengers have to pay higher [fol. 1102] fares than the intrastate passengers for corresponding distances."

The petitioner also specifies that the following finding on said sheet 13 is likewise in error, said finding being unsupported by the evidence in the cause, and consequently any order based upon said finding would be unconstitutional:

"All trains operated by respondents in [Tennessee] are available to and are used by both interstate and intrastate passengers, and the services accorded to both classes of passengers are substantially the same."

The petitioner herein further specifies that the following finding of the Commission, on sheet 20, is in error, said finding being unsupported by the evidence in the cause, and consequently any order based upon the said finding would be unconstitutional:

"Both intrastate and interstate passengers travel side by side under substantially similar circumstances and conditions on practically every passenger car on every branch and main line operated by respondents in [Tennessee]."

These three findings are essentially identical, although they are separated and repeated at three or more points in the report of the Commission. For that reason they are here grouped in one specification of error. The true state of the

record with reference to this particular finding is sufficiently [fol. 1103] set out hereinabove under Specification of Error No. 1, and the portions of the record relied upon to show that said finding is incorrect, erroneous and contrary to the evidence and proof are also there stated.

In all of the foregoing respects the report, findings, and conclusions of the Interstate Commerce Commission violate the Tenth Amendment of the United States Constitution, in that they invade powers reserved to the State of Tennessee to regulate intrastate commerce, and to create on proper conditions, control and regulation of corporations doing business in the State of Tennessee.

Dated at Nashville, Tennessee, April 24, 1944.

Respectfully submitted, Railroad and Public Utilities Commission of the State of Tennessee. By Leon Jourolmon, Jr., Commissioner and Counsel.

[fol. 1104] Certificate of Service

I hereby certify that I have served the foregoing document upon all parties of record in this proceeding by mailing a copy thereof, properly addressed, to each party.

Dated at Nashville, Tennessee, this 24th day of April, 1944.

Leon Jourolmon, Jr. Counsel.

[fol. 1105] Before the Interstate Commerce Commission

Docket No. 28963

Alabama Intrastate Fares

Docket No. 29000

Kentucky Intrastate Fares

Docket No. 29036

North Carolina Intrastate Coach Fares

Docket No. 29037

Tennessee Intrastate Fares

PETITION OF THE PRICE ADMINISTRATOR FOR RECONSIDERATION —Filed April 26, 1944

Comes now the Price Administrator, Intervenor in these proceedings, on his own behalf and on behalf of the Economic Stabilization Director, and petitions the Interstate

Commerce Commission to reconsider its decision of March 25, 1944, for the following reasons:

[fol. 1106] (A) The Interstate Commerce Commission has arbitrarily permitted the railroads of the Southern region to obtain unreasonably high profits by taking undue advantage of wartime conditions to make abnormal increases of coach fares above the level found practicable during peacetimes.

(B) The decision of the Interstate Commerce Commission is an unlawful violation of the reserved constitutional rights and powers of the States of Alabama, Kentucky, North Carolina, and Tennessee, and of the delegated powers of the Alabama Public Service Commission, the Kentucky Railroads Commission, the North Carolina Utilities Commission, and the Tennessee Railroad and Public Utilities Commission.

(C) Neither the facts of record nor the Commission's findings of basic facts afford any substantial support for the ultimate findings and conclusion that the interstate fares are reasonable.

(D) The Commission erred, as a matter of law and contrary to its own assurances, by failing and refusing to give due consideration to wartime stabilization policy enacted by Congress in Section 1 of the Stabilization Act of October 2, 1942.

(E) The Commission's decision is an unwarranted interference with the cooperation between the President of the United States and the State Commissions in the efforts of the latter to aid in the effective prosecution of the war, as requested of them by the President.

[fol. 1107]

I. Argument

A. The Interstate Commerce Commission Has Arbitrarily Permitted the Railroads of the Southern Region to Obtain Unreasonably High Profits by Taking Undue Advantage of Wartime Conditions to Make Abnormal Increases of Coach Fares Above the Level Found Practicable During Peacetimes.

Intervener respectfully submits that Respondents' own evidence shows that the increase of coach fares from 1.65

to 2.2 cents per mile was not practicable in peacetimes; and that the records in these four cases conclusively show that the increases were and are not necessary for Respondents, but enable them to profit from inflationary wartime conditions which make the increases possible.

To properly understand the situation, one must know the background of the fares.

In 1936 the Interstate Commerce Commission established a maximum fare, for the country as a whole, of 2 cents per mile in coaches, although it found that in 1933 the cost of the services was 2.73 cents per mile for the country, and 3.25 cents per mile in the Southern District. See *Passenger Fares and Surcharges*, 214 I. C. C. 174, 180, 266. The Commission justified a maximum fare which would inevitably produce deficits upon two principal grounds:[1] (1) The Com- [fol. 1108] mission pointed out (214 I. C. C. 225-228) that freight rates had been established at a level which would support the passenger service.[2] (2) The Commission con-

---

[1] With respect to the Southern railroads the Commission outlined the issues from a factual viewpoint as follows (214 I. C. C. 200-201): "What respondents are all seeking is a reasonable fare basis which will produce the greatest amount of revenue. The day when an increase in basic fare was quite certain to produce a corresponding increase in revenue is gone, and it would seem from the record that it may have been even before the general increase of 1920. The problem for this respondent and its southern competitors is, what reasonable fare basis will meet with greatest revenue response from the public?"

[2] In *Fifteen Percent Case, 1937-1938*, 226 I. C. C. 41, the Commission authorized the railroads of the country to make a 10 percent increase in freight rates, and said (p. 54):

> This deficit in the passenger traffic as a whole has continued from at least 1926, mounting steadily to a peak in 1932, and receding only slightly thereafter. *Passenger Fares and Surcharges*, 214 I. C. C. 174, 182. The interrelation of the freight and passenger traffic has often been commented on by us, and we have declined to the proposition again repeated here by certain protestants that we can authorize no increase in freight

cluded that the 2 cent fares for the country as a whole would produce the greatest total revenues, although deficits would occur. With respect to Southern carriers the Commission found (214 I. C. 255):

> There is doubt whether at least in the southern district a coach fare of 1.5 cents per mile is not producing better revenue results for those respondents than would any higher fare, and it may also be that round-trip fares on both coach and pullman traffic at a lower rate per mile than the one-way fares herein prescribed would bring to respondents better revenue results than the higher fares. These matters are left to the discretion of respondents.

As stated in the Commission's report (sheets 2 and 5), need for the low fares was due to competition from automobiles and motor busses. In all of the records Respondents' [fol. 1109] witnesses admitted this fact.[3] Whatever doubt there may have been as to the revenues possibilities of the 2 cent fares in the South has been removed by the records in these proceedings, for the Southern railroads did try the higher fares for the fourteen months, beginning Novem-

---

> rates to correct deficiencies in aggregate earnings growing out of the inability of the passenger business to meet its full share of the revenue burden. *Revenues in Western District*, 113 I. C. C. 3, 22-23; *Fifteen Per-cent Case, 1931*, 178 I. C. C. 539, 565; compare *General Commodity Rate Increases, 1937, supra.*

---

[3] Alabama record, Tr. pp. 11, 98.

Kentucky record, Tr. p. 8.

North Carolina record, Exhibit 1, "page 2", and Tr. p. 58-60.

Tennessee record, Tr. pp. 11, 171-172.

In *Passenger Fares and Surcharges, supra*, the Commission said: "In the latter year (1920) the average intercity travel of every inhabitant of the country was about 500 miles. In 1929 it was about 2,000 miles, and in 1933, about 1,700 miles, only 130 miles of which were by rail. During the same period the average annual per capita travel by rail dropped from 448 miles in 1920 to 256 miles in 1929 and 130 miles in 1933." (214 I. C. C. 183.)

ber 15, 1937. Their conclusion at the end of that trial was that the lower fare produced greater total revenues. This fact was not only admitted in the testimony of Respondents' witnesses,[4] but is also shown by Respondents' exhibits from which the following data has been taken. Note the drop in unit revenues in 1938, with the lag in recovery extending into 1939.

13 Alabama Railroads
Docket 28963, Ex. 17, p. 10

	Train Revenue per Passenger Carrying Car Mile
1937	15.72
1938	14.65
1939	14.56
1940	15.41
1941	19.95
1942	36.54

7 Kentucky Railroads
Docket 29000, Ex. 6, pp. 14 & 16

	Revenue per Pass. Mile In Coaches	Revenue per Coach Mile
1937	1.517¢	23.65¢
1938	1.772	21.85
1939	1.482	21.12
1940	1.437	22.66
1941	1.506	29.41
1942	1.686	52.02

[fol. 1110]

11 Tennessee Railroads
Docket 29037, Ex. 6, pp. 14 & 16

	Revenue per Pass. Mile in Coaches	Revenue per Coach Mile
1937	1.524¢	21.35¢
1938	1.774	19.15
1939	1.477	18.59
1940	1.446	20.09
1941	1.515	26.66
1942	1.697	48.36

6 North Carolina Railroads
Docket 29036, Ex. 9, pp. 15 & 17

	Revenue per Pass. Mile in Coaches	Revenue per Coach Mile
1937	1.494¢	22.62¢
1938	1.806	19.51
1939	1.395	20.17
1940	1.362	23.30
1941	1.403	30.93
1942	1.560	52.44

In March, 1942, the Commission authorized increases of 6 percent in freight rates and 10 percent in passenger fares, primarily because of increased wage expenses. See *Increases Railway Rates, Fares, and Charges, 1942*, 248 I. C. C. 545. The State Commissions also authorized these increases, bringing the Southern interstate and intrastate coach fares to the level of 1.65 cents per mile.

Changed conditions resulting from the war, including, as we all know, limitations upon the use of automobiles and

---

[4] Alabama record, Tr. pp. 17, 98-99.
Kentucky record, Tr. pp. 16, 46-47.
North Carolina record, Tr. p. 60.
Tennessee record, Tr. pp. 20-21, 173.

increased spending powers, made the increase of Southern coach fares practicable.[5]

[fol. 1111] On August 1, 1942, the Commission authorized increases of Southern coach fares to 2.2 cents per mile; these increases were published to become effective October 1, 1942.[6]

---

[5] See sheet 5 of the Commission's report. In *Increased Railway Rates, Fares, and Charges, 1942*, 248 I. C. C. 545, 565, the Commission said:

> "Because of the *abnormal* conditions which now prevail throughout the country, we are of the opinion that the increased fares proposed will yield substantial amounts of additional revenues * * *." (Emphasis added.)

[6] On July 14, 1942, the rail carriers in Southern Passenger Association territory filed a petition with the Commission for modification of the order in *Passenger Fares and Surcharges, supra,* seeking authority to increase coach fares in Southern territory to 2.2 cents per mile. On August 1, 1942, the Commission issued an order without prior hearing or report, stating that the petition of the rail carriers was denied; but the order was issued also under *Increased Railway Rates, Fares, and Charges, 1942* modifying the order in the latter proceeding by authorizing the railroads "to apply the increase of 10 percent approved in said order to a basic fare of 2 cents per mile." The railroads did not notify the Price Administrator of the proposal authorized by the Commission on August 1, 1942, but it was discovered in sufficient time so that the Price Administrator was able to protest the increases published in the carriers' tariff to become effective October 1, 1942. As stated in its report herein, the Commission refused to suspend the rates or to enter upon an investigation to determine the reasonableness thereof.

In October 1942 the Southern railroads followed prescribed procedures to increase intrastate fares to the interstate level. The increases were denied by the Alabama Public Utilities Service Commission, the Railroad Commission of Kentucky, and the Tennessee Railroad and Public Utilities Commission. The North Carolina Utilities Commission has not denied the increases, but deferred action and filed a petition with the Interstate Commerce Commis-

[fol. 1112] By decision of April 6, 1943, in *Increased Railway Rates, Fares and Charges, 1942*, 255 I. C. C. 357, the Interstate Commerce Commission found that the freight rate increases were not necessary, and ordered their suspension. The passenger fare increases were allowed to remain, however, for reasons stated by the Commission as follows (255 I. C. C. 394):

> The situation regarding standard passenger fares differs from that as to freight rates and charges in important respects. As we have previously shown, the evidence herein discloses that passenger traffic failed for many successive years to pay its proper share of railway expenses, and that only with the large volume of traffic and passenger revenue was the 1942 passenger deficit currently eliminated. Even with that increased volume of traffic and revenue, as shown by the reports for 1942 and the current reports so far made this year, the operating ratio remains decide-ly less favorable for passenger and allied services than for freight.

At about the time the Commission made the above quoted statements, there were in progress phenomenal increases in passenger traffic, which in the South were undoubtedly due to the large number of military camps and establishments. At the hearings in the Kentucky, Tennessee, and North Carolina cases, Intervenor submitted testimony and exhibits showing that this change had become so great that passenger operating ratios had become as favorable as the

---

sion on July 8, 1943, seeking an investigation by the latter into the reasonableness of interstate passenger coach fares to, from, and within the State of North Carolina. Petitions were then filed by the Price Administrator on July 13, 1943, and by the Alabama Public Service Commission, seeking an investigation into the reasonableness of interstate coach fares in the Southern Region generally. These petitions directed the Commission's attention to the phenomenal and favorable changes in passenger traffic and revenues; but the petitions were denied, without hearing, by a divided vote of the Commission. The North Carolina Utilities Commission has never closed its doors to continuance to its proceeding, which has been interrupted by this proceeding before the Interstate Commerce Commission.

freight operating ratios. From the monthly reports and the 1943 annual reports of Respondents filed with the Commission, Intervenor has computed operating ratios for 17 Class [fol. 1113] I Respondents in these proceedings.[7] for the year 1943 the freight service operating ratio was 58.9 percent as compared with a passenger ratio of 57.3 percent.

With such extraordinarily favorable operating ratios, the resulting favorable financial position of Respondents is unavoidable. In Appendix B to this Petition, Intervener has set forth computations of the rates of return for 10 Class I Respondents for the year 1943.[8] Before deductions of federal income taxes, this rate of return for all 17 railroads was 16.8 percent on Intervener's depreciated base, and 12.8 percent on Respondents' undepreciated base.[9]

---

[7] See Appendix to this Petition. An operating ratio is the percentage of operating expenses to operating revenues. Because all of the 17 railroads have not filed their annual reports for 1943, the passenger expenses for them have been estimated according to the formula explained in Intervenor's Exhibits 16, 20 (p. 5), and 13 in the Kentucky, North Carolina, and Tennessee records, respectively. The actual operating ratios for 1936 to 1942, in the four proceedings, and the estimates for parts of 1943, made by Intervenor's witness in the three proceedings, are set forth on page 3 of Appendix to this Petition. A comparison of the estimates with the actual reports to the Commission for 7 of the 17 railroads is set forth on page 2 of Appendix hereto. Note the conservativeness of the results from the formula, which was not challenged by Respondents either on cross-examination, on brief, or at oral argument.

[8] The Commission and the Courts have held that depreciation should be deducted from the rate base. See *Charges for Protective Service To Perishable Freight*, 215 I. C. C. 684, 692. *Knoxville* v. *Knoxville Water Co.*, 212 U. S. 1, 10. *Minnesota Rate Cases*, 230 U. S. 352, 457-458. *Los Angeles Gas & Electric Corp.* v. *California R. Comm.*, 289 U. S. 287, 312. *Power Commission* v. *Hope Gas Co.* 320 U. S. 591. Note that Exhibits 16 and 20 (p. 8) of the Tennessee and North Carolina records, respectively, show that Respondents' rate base for Class I railroads in the Southern Region was 130.1 percent of the final value found by the Commission in the *Fifteen Percent Case, 1937-1938*, 226 I. C. C. 41, 161, while Intervener's base would have been 93.1 percent of the final value.

After deduction of all taxes, the rate of return was 7.4 percent on Intervener's depreciated base, and 5.8 percent on Respondents' undepreciated base.

[fol. 1114] In the Alabama record, Respondents' Exhibit 17 (page 19) shows that the 1942 rate of return, after all taxes on its undepreciated base was 6.41 percent for Class I carriers in the Southern Region.

There is more available data in the Kentucky record. As pointed out in Intervener's brief[9] and Exceptions, the rate of return, for 7 Kentucky Respondents, on Respondents' undepreciated base was 12.78 percent before deduction of Federal income taxes, and 6.60 percent after taxes, for the 12 months ended June 30, 1943. Upon Intervener's depreciated base the rates of return were 18.11 before deduction of Federal income taxes and 9.35 percent after taxes, for the same period. The Railroad Commission of Kentucky estimated the rate of return before Federal income taxes for the full year 1943 as 17.96 percent.

In the North Carolina record, Intervener's Exhibit 20, page 6, shows a rate of return for 7 North Carolina railroads, before Federal income taxes, of 14.7 percent on Respondents' undepreciated base and of 18 percent of Intervener's depreciated base for the 12 months ended October 31, 1943.

In the Tennessee record Intervener's Exhibit 15 shows a rate of return for 8 Tennessee Respondents', before Fed-
[fol. 1115] eral income taxes, of 12.8 percent on Respondents' undepreciated base and 18.8 percent on Intervener's depreciated base for the 12 months ended September 30, 1943.

From the above facts, Intervener draws the following conclusions:

(1) The passenger service is now more profitable with freight service, even though the freight revenues are swelled by the passenger service support factor in freight rates. This fact is shown by the operating ratios.

(2) If rates of return are calculated prior to Federal income taxes, Respondents are undoubtedly earning far

---

[9] The computations (page 25 of brief) were based on Exhibit 9, sheet 5; Exhibit 12; Exhibit 17; and first 7 pages of Exhibit 19. The estimate of the Kentucky Railroad Commission is set in Exhibit 10.

more than a fair rate of return, regardless of the rate base which may be used in calculations. The Commission has stated that rates of return should be determined prior to deduction of such taxes, because "railway corporations should, like other corporations, pay their Federal income taxes out of the income, rather than collect it, in effect, from the public in the form of transportation charges adjusted to enable it (them) to retain the designated fair return over and above the tax." *Reduced Rates,* 1922, 68 I. C. C. 676, 683; *Increased Railway Rates, Fares, and Charges, 1942,* 248 I. C. C. 545, 556. Intervener concurs in this rule, and contends that Respondents' fair rates of return should be computed upon the basis of their paying a fair share of wartime taxes from their net income.

(3) Authorizing Respondents to *increase* coach fares on October 1, 1942, and at the same time permitting them to [fol. 1116] profit from the support factor in freight rates multiplied by the increase in freight traffic, has resulted in unreasonably high profits for Respondents.

(4) The increase of rates from 1.5 to 2 cents per mile was found by Respondents as not practicable during peacetimes, because of the resulting drop in total passenger revenues. The increase of revenues is now possible only because of wartime conditions resulting from decreased use of automobiles; this fact is admitted by Respondents and stated as fact in the Commission's report.

Therefore, by its decision in these proceedings, the Interstate Commerce Commission has arbitrarily and capriciously disregarded the undisputed facts, and has permitted the railroad of the Southern region to obtain unreasonably high profits by taking undue advantage of wartime conditions to make abnormal increases of coach fares above the level found practicable during peacetime.

B. The decision of the Interstate Commerce Commission is an unlawful violation of the reserved constitutional rights and powers of the States of Alabama, Kentucky, North Carolina, and Tennessee, and of the delegated powers of the Alabama Public Service Commission, the Kentucky Railroad Commission, the North Carolina Utilities Commission, and the Tennessee Railroad and Public Utilities Commission.

Because of the rights reserved to the States by the United States Constitution, the powers of the Federal government do not extend to regulation of intrastate commerce, [fol. 1117] unless the conduct of intrastate commerce unduly burdens or injures interstate commerce. This is the doctrine of the so-called Shreveport case, *Houston, E. & W. T. R. Co.* v. *United States* (1913) 234 U. S. 342. Section 13(4) of the Interstate Commerce Act expressly provides that the jurisdiction of the Interstate Commerce Commission to prescribe intrastate rates and fares is dependent upon a finding that such rate or fare "*causes* any *undue* or *unreasonable* advantage, preference, or prejudice as between persons or localities in intrastate commerce on the one hand and interstate or foreign commerce on the other hand, or any *undue, unreasonable* or *unjust* discrimination against interstate or foreign commerce." (Emphasis added.)

In that portion of the report entitled "Undue advantage, preference, or prejudice" (sheet 13), the commission sets forth illustrations of different fares, saying: "all are based upon the fact that the interstate fares are made on the basis of 2.2 cents per mile, while the intrastate fares are based on 1.65 cents per mile." The report then states that the same train services are substantially the same and available to and used by both interstate and intrastate passengers.[10]

The facts stated by the Commission in this portion of its report may show advantage, preference, and prejudice [fol. 1118] as between persons and localities; but are such advantages, preference, and prejudice *undue* or *unreasonable?*

The Commission and the Courts have held that disparity between rates and fares does not in itself *cause undue* or *unreasonable* advantage, preference, or prejudice. This fact is pointed out in the dissent of Commissioners Splawn, Aitchison, and Mahaffie who cited Florida v. United States (1933) 282 U. S. 194, in which the United States Supreme Court said:

> The Commission has no general authority to regulate intrastate rates, and the *mere existence of a disparity*

[10] Intervener does not admit that this last statement is true. The petitions of the States will undoubtedly cover this point in detail.

between particular rates on intrastate and interstate traffic does not warrant the Commission in prescribing intrastate rates. (282 U. S. 212; emphasis added.)

As also pointed out by the dissenting Commissioners, there must be a showing of additional facts which would warrant a conclusion that the disparity *caused* something which is *undue* or *unreasonable*—as, for example, adverse affects upon competition between businesses located in border cities. *Railroad Comm. of Wisconsin v. Chicago B. & Q. R. Co.* 257 U. S. 563. See also *Passenger Fares and Charges in Georgia* (1936) 214 I. C. C. 567. In other words, unless there is a showing of injury or adverse effect upon interstate commerce, there is no Federal jurisdiction. No facts showing adverse effects or injury to persons or localities are in this record, nor stated in the Commission's report.

In that part of the report labeled "Unjust discrimination" the Commission estimates the amounts which Re- [fol. 1119] spondents would have received if the proposed interstate fares were in effect. The remainder of this part of the report then discusses the possibility of defeating interstate fares by purchasing intrastate tickets in combination with interstate tickets.

The infirmities of the evidence are apparent from the Commission's admission that the record does not show any particular instances in which interstate fares were defeated. Respondents' witnesses believed that such was the case, but the evidence was admittedly hearsay, and objected to as such. The Commission's findings, if such they be, are, therefore, based on hearsay. In 13th section proceedings the "preference, prejudice, and discrimination must be *real* and *substantial* and proved by *convincing evidence.*" *Passenger Fares and Surcharges in Georgia, supra,* (214 I. C. C. 576; emphasis added). Hearsay evidence did not satisfy this requirement in *Fertilizers and Fertilizer Materials in Mississippi* 191 I. C. C. 413, 421-422.

But even if interstate fares were being defeated, as suggested by the Commission, this evidence is of little importance, since, to the extent that passengers are engaging in such a practice, the effect is necessarily fully reflected in the estimates of revenues which would have been received if the intrastate fares were 2.2 cents per mile.

Of greater importance, however, is the fact that section 13(4) does not forbid discrimination between persons and

localities. Only discrimination against interstate or [fol. 1120] foreign commerce is forbidden. This distinction is pointed out in *Florida v. United States, supra,* as follows:

> In dealing with unjust discrimination as between persons and localities in relation to interstate commerce, the question is one of the *relation of rates to each other.* In considering the authority of the Commission to enter the state field and to change a scale of intrastate rates in the interest of the carrier's revenue, the question is that of the *relation of rates to income.* (282 U. S. 214; emphasis added.)

In this same case, the United States Supreme Court said:

> As intrastate rates and the income from them must play a most important part in maintaining such a system, the effective program of the act requires that intrastate traffic should pay "a fair proportionate share" of the *cost of maintenance.* (282 U. S. 211; emphasis added.)

That decision was made under section 15a enacted in the Transportation Act of 1920, which contained the so-called "recapture clause" with respect to railroad earnings above a fair rate of return. Upon repeal of the recapture provisions in 1933, the present section 15a(2), as amended in 1940, was enacted. In *Florida v. United States* (1934) 292 U. S. 1, query was raised as to the effect of the statutory change upon the "dove-tail" relation with section 13(4). The court held that there was no change in the previous rule, which it stated as follows (p. 5):

> We concluded that these words in section 13(4) were not tautological, but had the necessary effect of conferring authority upon the Commission to raise intrastate rates so that intrastate traffic may produce its fair share of the earnings required *to meet maintenance and operating costs* and *to yield a fair return* on [fol. 1121] the value of the property devoted to the transportation service, both interstate and intrastate. *United States v. Louisiana,* 290 U. S. 70. (Emphasis added.)

From these excerpts from opinions of the Supreme Court, the conclusion is apparent that the Commission has completely misconceived its duty with respect to findings of fact necessary to show the unjust discrimination forbidden by section 13(4). The Commission has based its decision upon discrimination against persons or localities. Discrimination in interstate commerce between persons and localities may be in violation of section 3 of the Act, but the Commission has no such jurisdiction over intrastate commerce. The discrimination forbidden by section 13(4) is against interstate commerce as a whole, i.e., with respect to the revenues of the carriers.

In its report, the Commission does not even attempt to determine whether the level of intrastate rates will prevent Respondents from making a fair rate of return, although evidence and contentions of the parties in this respect involved one of the principal issues in these cases, as indicated by the foregoing part of this Argument.[11]

The Commission's report shows on its face that Respondents' passenger services have been profitable beginning in 1942, and hence there is no question but that costs [fol. 1122] of maintenance and operations are being met, despite the increased expenses of increased traffic which is producing increased revenues. Upon what finding of fact, therefore, can the Commission have based its conclusion in Finding 5, that Respondents require added revenues?

The importance given in the report to the passenger deficits prior to 1942, indicates that the Commission has reached the conclusion that it should require increases of intrastate fares so that carriers may recoup for past losses. If such facts are the basis of the decision, a matter of extremely great importance is involved.

Whether or not the Commission has the discretionary power to increase interstate fares during wartime to compensate for peacetime losses, the fact is clear that the railroads are not absolutely entitled to such recoupment from

[11] Rates of return are mentioned in the report with respect to the Kentucky respondents, but the infirmities of this inflated base are pointed out on pages of this petition and in the dissenting report. Note that the Commission did not find that such a rate of return was "fair."

intrastate fares. The United States Supreme Court has held that "regulation does not insure that the business shall produce net revenues, nor does the Constitution require that the losses of the business in one year shall be restored from future earnings * * *" *Federal Power Commission v. Natural Gas Pipeline Co.* (1942) 315 U. S. 575, 590. See also *Power Comm'n v. Hope Gas Co.* (1944) 320 U. S. 591, 603; *Galveston Electric Co. v. Galveston*, 258 U. S. 388; *Georgia Ry. & Power Co. v. Railroad Comm. of Georgia*, 262 U. S. 625, 632.

Also ignored by the Commission is the fact that during the years of passenger deficits, these losses were compen- [fol. 1123] sated from a support factor in the right rates,[12] and this compensation was not included in the amounts set forth in the Commission's report. Furthermore, now that the passenger service is returning profits from its own fares, this unnecessary support is continuing, and has been multiplied by the great increase in volume of freight traffic.

Inherent in the Commission's decision, therefore, is the question whether it has jurisdiction under section 13(4) of the Interstate Commerce Act to increase intrastate rates and fares for the purpose of increasing carriers revenues *above* the *minimum* required by the Constitution and section 15a(2) of the Interstate Commerce Act. The Constitution requires only a fair return to the carrier sufficient to care for the interests of investors. *Power Comm'n v. Hope Gas Co., supra.* There is nothing in Section 15a(2) specifically requiring even less than a fair return; it requires only "revenues sufficient to enable the carriers, under honest, economical, and efficient management to provide such (adequate and efficient transportation) service."

There is no question but that the passenger service has in itself been profitable beginning in 1942; the Commission's report clearly shows that fact. Not having determined whether this profit is less or more than a fair rate of return, as contended by the parties, the Commission has [fol. 1124] obviously decided that Respondents are entitled to recoup for passenger services deficits prior to 1942, even though these deficits were compensated from a support

---

[12] See *Passenger Fares and Surcharges*, supra, and *Fifteen Percent Case, 1937-1938, supra.* Note the discussion of these cases on page 4 of this petition.

factor in the freight rate. Intervener respectfully submits, therefore, that such a decision goes far beyond the requirements of Section 13(4), which contemplates merely the *removal* of unjust discrimination, not *reparation for supposed losses* during years when there could have been no unjust discrimination because both interstate and intrastate fares were on the same level when the deficits were incurred. Cf. *Atlantic Coast Line R. Co.* v. *Florida*, 295 U. S. 301.

In considering the report in these proceedings as a whole, therefore, one must conclude that the majority of the Interstate Commerce Commission merely has a difference of opinion with the States as to the reasonableness of the remuneration from interstate and intrastate fares. Obviously, in acting on such a basis the Commission has gone beyond the scope of its statutory jurisdiction. In *Florida v. United States, supra*, the United States Supreme Court said (282 U. S. 214):

> But to justify the Commission in the alteration of intrastate rates, it was not enough for the Commission to find that the existing intrastate raes on the particular traffic were not remunerative or reasonably compensatory. The authority to determine the reasonableness per se of interastate rates lay with the state authorities and not with the Interstate Commerce Commission.

In this respect the Commission should follow its own rule, as stated in *Passenger Fares and Charges in Georgia, supra* (214 I.C.C. 576):

> [fol. 1125] The authority to determine the reasonableness per se of intrastate rates or fares rests exclusively with the State authorities. Our power to prescribe them is incidental to the regulation of interstate commerce, and it is not enough for us merely to find that they are not remunerative or reasonably compensatory.

Intervener respectfully submits that the Commission's decision is in violation of section 13(4) of the Interstate Commerce Act, because its finding of *undue* and *unreasonable* advantage, preference, or prejudice is based entirely upon the "mere existence of a disparity" between the interstate and intrastate fares; and because its finding of

unjust discrimination against interstate commerce is based upon erroneous considerations with respect to discrimination against persons rather than interstate commerce, and upon the erroneous principle that intrastate fares may be increased in order to compensate Respondents for passenger operating deficits prior to 1942, which in fact were already compensated by the support factor in freight rates. Missing from the record and the report are facts showing that the lower intrastate rates *unduly, unreasonably,* or *unjustly* burden or injure interstate commerce. Intervener submits, therefore, that the Commission has exceeded the Federal powers, and that the Federal government has no jurisdiction to this extent.

[fol. 1126] C. Neither the facts of record nor the Commission's findings of basic facts afford any substantial support for the ultimate finding and conclusion that the interstate fares are reasonable.

Finding 1 of the report states:

> "The interstate one-way and round-trip coach fares now in effect to, from, and through points in Alabama, Kentucky, North Carolina, and Tennessee, and the interstate round-trip fares applicable in sleeping and parlor cars now in effect to, from, and through points in Alabama and Tennessee, are just and reasonable."

In its report the Commission pointed out that only in the four Southern States is the civilian coach fare less than 2.2 cents per mile, and said: "It is a well settled rule that the most helpful evidence in determining the reasonableness of rates or fares in comparison with other rates or fares for like services."

To the contrary, contrast with this statement the following:

> "Comparisons with other rates in the same or adjacent territory, while *not a conclusive test* of reasonableness of a rate under investigation, have probative value." *Youngstown Sheet and Tube Co.* v. *United States* (1935) 295 U. S. 476, 480. (Emphasis added.)
>
> "The rates with which comparison is made must be examined in order to determine whether they are proper yardsticks by which to measure the reasonableness of the rates in issue." *Western-Southern Class Rates* (1938) 226 I.C.C. 497, 520-521.

When the level of interstate coach fares was increased to 2.2 cents per mile, effective October 1, 1942, the Commission refused to grant Intervener's protest and sub-
[fol. 1127] sequently has refused to consider the reasonableness of the increased fares, except for the Ex Parte to 148 increase of 10 percent which is not contested in these proceedings. In effect, the Commission has refused to consider the reasonableness of the interstate fares, and then begs-the-question by making the assumption that comparison of the higher and lower fares shows that the higher is reasonable. The absurdity of this logic is apparent: Why does this comparison not show that the lower fares are reasonable and that the high- fares are unreasonable?

To be recalled in this connection is the fact that except for 14 months from November 15, 1937, to January 15, 1939, Southern coach fares have been on the basis of 1.5 cents per mile since 1933, with the 10 percent in 1942. Why not compare the intrastate rates with these prewar interstate rates? The Commission has a rule stated in *Gannett Co., Inc.*, v. *Baltimore & O. R. Co.* (1936) 219 I.C.C. 617-618 as follows:

> Where carriers voluntarily maintain a rate between certain points for a long time the presumption is that such a rate is reasonable, and where a long established rate is raised for a short period and then voluntarily reduced to the former basis the presumption is that the advanced rate is unreasonable.

To be remembered is the fact that this rule of comparisons has been developed in the field of freight rates, rather than with respect to passenger fares. The Commission first establishes the general level of class rates upon findings with respect to costs and rate of return, and then uses comparisons for the purpose of properly relating rates on [fol. 1128] particular commodities. In this case, however, we have a separate and important service, and the reasonableness of the rate is not a matter of relation with an established reasonable level. A more elemental issue is before the Commission as to the reasonableness of the general level. In such determination of reasonableness, the cost of the service and the carriers' rate of return become of primary importance. The parties in these proceedings submitted evidence or contentions in these re-

spects. Why did the Commission not consider such facts and contentions?

Although Respondents had the burden of proof, they did not submit data showing unit expenses which would indicate costs of the coach service. The dissenting report points out this deficiency, saying (sheets 25 and 26):

> As a matter of fact it does not affirmatively appear on this record that fares based on the lower intrastate level applied to both interstate and intrastate traffic would be less than required to enable respondents to render the character of service contemplated by section 15a.

The demonstration of a more affirmative conclusion of fact than that of the quoted statement is possible by use of figures available for the record to approximate the unit cost of the service and to indicate the probable effect of reducing all interstate and intrastate fares to 1.65 cents per mile.

The data necessary to show costs of operation with any certainty are available only to Respondents, who made no [fol. 1129] efforts to show such costs. However, Counsel for the North Carolina Utilities Commission made the following calculations on brief and at the oral argument with respect to data in the North Carolina record:

	1937	1942
Revenues per coach mile (Ex. 9, p. 17)	22.02¢	52.44¢
Multiplied by Operating Ratio (Ex. 9, p. 11)	1.17	.63
Expense per coach mile	25.75¢	33.03¢
Divided by passenger miles per coach mile (Ex. 9, p. 31)	14.74	33.62
Expenses per passenger mile	1.75¢	0.98¢
Intrastate Rate per mile	1.5¢	1.65¢

The same computations from the other records show that the passenger coach-mile expenses for Kentucky and Tennessee were 1.97 cents and 1.89 cents for 1937, and 1.24 cents and 1.22 cents for 1942 respectively.[13]

[13] Kentucky record, Exhibit 6, pp. 10, 16 and 30; Tennessee record, Exhibit 6, pp. 10, 16 and 30; the data was not shown by Respondents in the Alabama record, but most of the Alabama railroads were in the other proceedings, and there is no reason to believe that the data would differ materially.

These unit cost figures are more likely to be too high than too low, because coach revenues have increased much more than pullman and parlor car revenues, as stated in the Commission's report (sheet 7), and multiplication by the operation ratio would, therefore, tend to overestimate expenses, particularly as coach mile expenses are less than for pullman and parlor cars as shown in *Passenger Fares and Surcharges, supra* (214 I. C. C. 266). Another calculation of unit coach-mile costs, for the Southern District is [fol. 1130] set forth on page 6 of the Appendix. It shows expenses per coach passenger mile of 1.60 cents for 1937, .88 cents for 1942, and .68 cents for 1943, as compared with the intrastate rate of 1.65 cents and the present interstate rate of 2.2 cents per mile in coaches. This estimate is also likely to be high, as it assumes that expenses for coach operation is equal to the cost of operating the average car in passenger service.

Page 7 of the Appendix shows the probable effect upon revenues of the 17 Respondents, if all coach fares except furlough fares had been at the rate of 1.65 cents per mile during 1943. The result would have been an operating ratio of 64.2 percent instead of 57.3 percent. The reduction in income would, of course, result in reduction of taxes, perhaps by as much as 80 percent of the reduced income. Before taxes, however, the rate of return from the reduced revenues for 1943 would have been 15.4 percent on Intervener's depreciated base and 11.7 percent on Respondents' undepreciated base, compared with actual rates of return 16.8 and 12.8 percents, respectively. (See page 4 of Appendix.)

Excepting for the post-hearing exhibits filed in the Kentucky case, previously discussed, Respondents rate of return studies were based upon average rates of return from 1921 to 1942, inclusive, and Respondents based their case largely upon the proposition that the level of reasonable rates should be considered over a period of years. The Commission has evidently concurred with this viewpoint [fol. 1131] to the extent of permitting Respondents to recoup for passenger deficits prior to 1942. Such reasoning has the following deficiencies.

(1) The Commission arbitrarily and capriciously failed to consider the fact that the support factor from freight rates had compensated for such deficits. There is, therefore, nothing to recoup.

(2) The Commission owes a duty to the general public, under Section 15a (2) of the Interstate Commerce Act, to maintain rates at the "lowest cost" consistent with the furnishing of adequate and efficient service; while, on the other hand, the carriers have no right to a guarantee of any rate of return. (See cases cited on page 19 of this petition.) In its report the Commission does not consider this aspect of the proceedings, and the report must be regarded as fatally defective because there has not been the required compliance with section 15a (2).

(3) The Commission should have considered the reasonableness of the fares in the light of wartime conditions, particularly with respect to the wartime stabilization program. No *increases* should have been authorized because Respondents do not need the added revenues, and because present rates are not below a reasonable minimum. *Passenger Fares and Surcharges, supra.*

In its report, the Commission described increased expenses and taxes incurred by Respondents during the war. Missing from this statement of facts, however, is the very essential finding whether Respondents need rate increases to meet these expenses, or whether the great increase in the volume of traffic will actually *reduce unit costs,* so that expenses per ton-mile and per passenger mile are actually lower than during times when expenses were low but traffic light. [14] As indicated by the prior discussion, Respondents

---

[14] The importance of volume of traffic on unit costs is illustrated by the following statements of the Commission in *Passenger Fares and Surcharges, supra:* "The heavy inroads upon the passenger business of railways resulting, among other things, from the competition of automobiles and motor busses have affected unfavorably the unit costs of the traffic remaining on the rails, and if the volume of rail passenger traffic can again be increased, the unit cost will decline when computed in the manner in which the 1933 cost was computed. Thus, an increase of only 0.79 passenger in the average car occupancy for 1933 of 11.2 in the eastern district would have been sufficient, the average passenger-mile revenue and average journey remaining the same, to eliminate the entire passenger deficit of $11,500,400 for 1933 in that district." (214 I. C. C. 182).

evidence may be analyzed to show that passenger-mile expenses have greatly declined. In failing to make findings in this respect, the Commission's report is deficient, and the decision rests upon unstable basic findings of fact.

[fol. 1133] In its report the Commission emphasizes the amounts of Respondents' net revenues after all taxes. Are the railroads entitled to pass along their excess profits taxes and other wartime taxes upon the public? The report does not state any reasons why Respondents are entitled to that previously taken by the Commission in *Increased Railway Rates, Fares, and Charges, 1942*, 248 I. C. C. 545, 556, quoting from *Reduced Rates, 1922*, 68 I. C. C. 676, 683. The effect of these taxes is well illustrated from the Kentucky record. There Respondents admitted that 80 percent of the increase of intrastate rates would be paid to the Federal Government in income taxes. [15] In all of these proceedings, Intervener has contended that Respondents should bear their fair share of wartime taxes, and should not be permitted to increase rates because of deductions of such taxes from income. The Commission disregarded this contention.

The Commission's report includes a discussion of the trend of railroad revenues, expenses, taxes, and operating

---

From the Alabama record (Exhibit 40 showing passenger-coach-car-miles revenue passengers carried one mile in coaches) we can compute passenger miles per coach mile for the Southern Region as 30.63 in 1942 and 20.53 in 1941. The other records show the data directly from Respondents' exhibits:

	7 Ky. RR. (Ex. 6, p. 30)	6 N.C. RR. (Ex. 9, p. 31)	11 Tenn. RR. (Ex. 6, p. 30)
1937	15.60	14.74	14.01
1938	12.33	10.81	10.80
1939	14.25	14.46	12.59
1940	15.77	17.11	13.89
1941	19.53	22.05	17.60
1942	30.85	33.62	28.51

---

[15] Kentucky record, Tr. p. 122.

income.[16] Using the data for July and December, 1943, the Commission points out apparently unfavorable comparison of percentages. In doing so the report speaks of declining [fol. 1134] increases in net railway operating income, and of a steadily declining deficit in net railway operating income percentages over the previous year. The effect of the language is very confusing, and might even lead the casual reader to assume that Respondents are losing money. In simple figures, much easier to understand, the contrary is

---

[16] The statistics in the regular monthly reports as made to us by the class I railroads were made a part of the record by stipulation at the oral argument. The latest such reports now on file with and available to us are for the month of December 1943. Compared with the same month in 1942, that month resulted in an increase of 0.2 per cent in freight revenue and 32.8 percent in passenger revenue for the Southern region and 7.4 and 27.2 percent, respectively, for the country, but in a reduction in net railway operating income from all rail operations of 61.4 percent for the Southern region and 55.9 percent for the country. For the year 1943 the increase over 1942 was 13.3 percent in freight revenue and 67.9 percent in passenger revenue for the Southern region and 14.1 and 60.8 percent, respectively, for the country, but the net railway operating income fell below that for 1942 by 9 and 8.3 percent, respectively. The monthly increases over the corresponding months of the preceding year in the passenger revenues of the railroads of the country, including those in the Southern region, have been quite steadily declining. Thus, in July 1943 that increase was 74.4 percent for the Southern region and 70.4 percent for the country, and in December of that year it was 32.8 and 27.2 percent, respectively. Also, the net railway operating income has steadily declined from a deficit compared with that for the same month of the preceding year of 12.1 percent for the Southern region and 9.7 percent for the country in July, to 61.4 and 55.9 percent, respectively, for December; so that, due to increased expenses and taxes, the net railway operating income of the railroads in the Southern region dropped from $28,578,717 in December 1942 to $11,035,492 in December 1943. (Sheet 8 of Comm. report.)

readily found to be true. The following figures are from the Commission's own reports:

Class I Railroads in Southern Region Earnings
1941 to 1943
(Dollar figures in thousands)

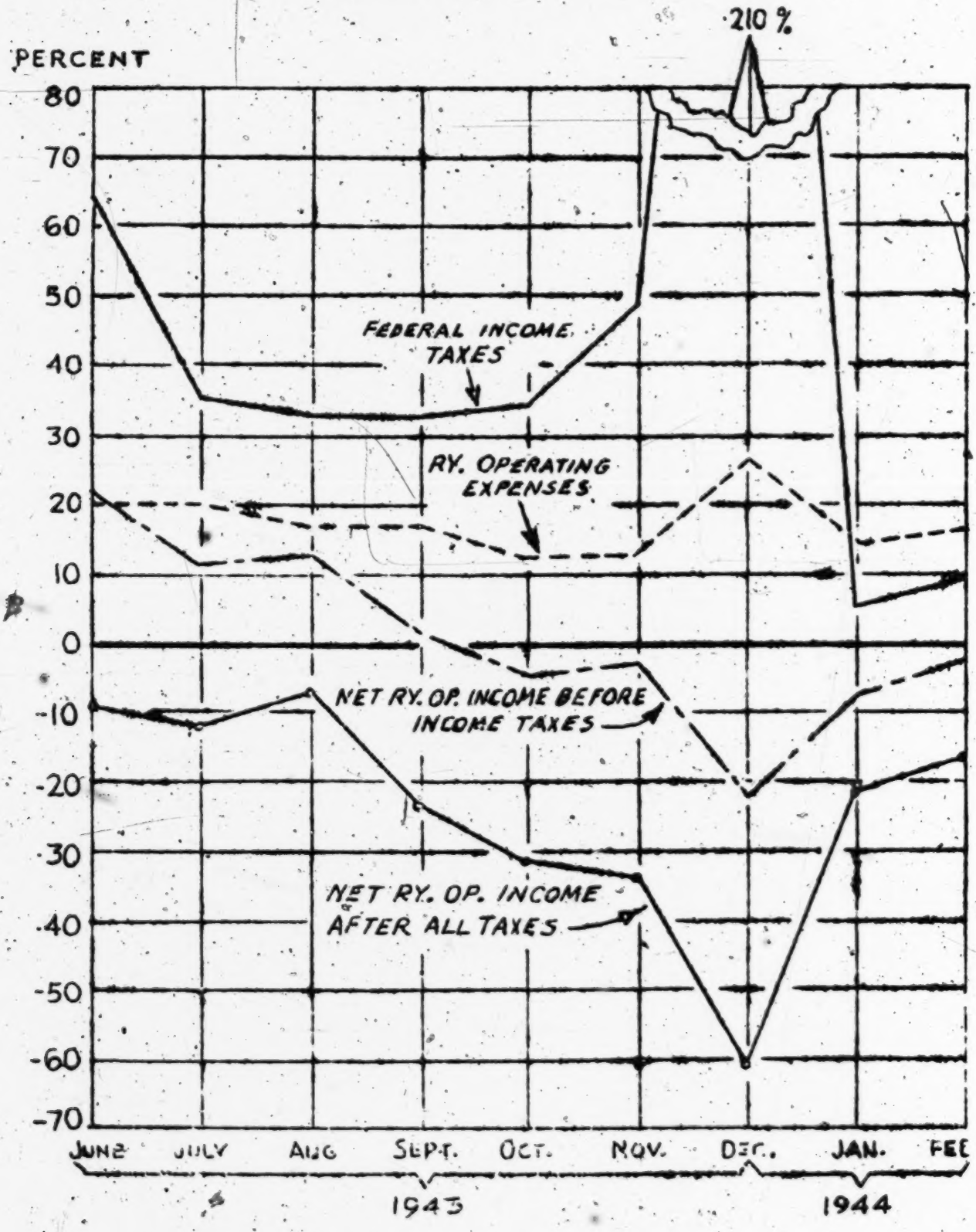
	1943	1942	1941	Percent Increase over 1943 1942	1941
Revenues	$1,293,756	$1,052,925	$698,243	22.9	85.3
Expenses	753,419	622,964	472,968	20.9	59.3
Operating Ratio	58.2	59.2	67.7		
Net Ry. Op. Income before Fed. Inc. Taxes	442,525	344,975	164,315	28.3	169.3
Federal Income Taxes	244,329	127,261	25,642	92.0	852.8
Net Ry. Op. Income after all Taxes	198,196	217,714	138,673	−9.0	42.9
Net Income before Fed. Inc. Taxes	375,724	253,295	100,487	48.3	273.9
Net Income after all Taxes	131,395	126,034	74,846	4.3	75.6
Passenger Revenues					
July	24,751	14,189	6,032	74.4	310.3
December	26,750	20,149	8,022	32.8	233.5
Net Ry. Op. Income before Fed. Inc. Taxes					
July	34,627	31,272	14,898	10.7	23.2
December	25,971	33,383	20,820	−22.2	24.7
Net Ry. Op. Income after Taxes					
July	14,290	16,262	11,746	−12.1	21.7
December	11,035	28,379	12,516	−61.4	−11.8

[fol. 1135] But even if one wishes to discuss the data in the confusing language of the Commission's report, the fact should be noted that the figures for December 1943 are wholly unsuited for trend comparisons, because in this month the carriers made adjustments for taxes and expenses, particularly retroactive wage awards, properly allocated over the full year. This fact is illustrated by the graph on the next page of this petition.

(Here follows 1 photolithograph, side folio 1136)

CHANGE FROM CORRESPONDING MONTH IN THE PREVIOUS YEAR EXPENSES, TAXES AND OPERATING REVENUE OF CLASS I RAILROADS IN SOUTHERN REGION

JUNE 1943 - FEB. 1944



SOURCE: Monthly Reports of ICC, Bureau of Transport Economics and Statistics

1136

4904

[fol. 1136a] Another consideration mentioned in the Commission's report is the mention of discouragement of passenger travel, desired by O.D.T., by means of coach fare increases. These four records contain no support for such findings. So far as data is concerned, the report states (sheet 7) that for the first 10 months of 1943, passenger coach revenues of all class I railroads in the Southern region increased 128.5 percent over the corresponding period of 1942, as compared with an increase of 30.2 percent in parlor and sleeping car revenues. The Commission's re-
[fol. 1137] port also states (sheet 14):

> "An increase in the intrastate fares to the interstate level under existing conditions, respondents insist, will not result in any important loss of traffic to other forms of transportation and will produce increased revenues substantially equivalent to those estimated by them."

This statement is then used in the Commission's specific finding No. 5. Therefore, from these findings of fact, the conclusion is obvious that there will be no discouragement of train travel by the increased fares.

In summary, the Commission's finding with respect to the present reasonableness of interstate fares has no basis in fact, unless the Commission is justified in disregarding the public interest in low cost transportation for the purpose of compensating Respondents for supposed deficits prior to 1942, which in fact were compensated from the passenger service support factor in the freight rates.

On the other hand, the record is full of facts showing that the interstate level is unreasonably high: (1) The comparisons of rate history show that the fare was at the actual and practical peacetime maximum. (2) The peacetime fare is presumably the reasonable maximum. (3) The unit cost of the service is far below the 1.65 cent fare. (4) Respondents are earning far more than a fair return. (5) The passenger service support factor, multiplied by increased traffic, either should satisfy any need for recoupment of revenues, if recoupment is justified; or the revenues from the support factor are resulting in unrea-
[fol. 1138] sonably high revenues which are wholly unnecessary, because the passenger services are now as profitable, or more profitable, than the freight services.

Therefore, Intervenor contends that neither the facts of record nor the Commission's findings of basic facts afford any substantial support for the ultimate finding and conclusions that the interstate fares are reasonable.

The Commission's error is due to its disregard of changed conditions resulting from the war, in order to adhere to its 1936 decision in *Passenger Fares and Surcharges, supra,* to which 10 percent increases were added in *Increased Railway Rates, Fares, and Charges, 1942, supra.* Intervenor respectfully submits that the Commission has failed in its duty to the public as required by section 15a, by not giving effect to these phenomenal changes in coach traffic.

[fol. 1139] D. The Commission Erred, As a Matter of Law and Contrary to Its Promises, by Failing and Refusing to Give Due Consideration to Wartime Stabilization Policy Enacted by Congress in Section 1 of the Stabilization Act of October 2, 1942

Section 1 of the Stabilization Act directs the President of the United States to stabilize prices "so far as practicable * * * on the basis of levels which existed in September 15, 1942." The President was then directed to provide for adjustment in such prices "to the extent that he finds necessary to aid in the effective prosecution of the war or to correct gross inequities." A proviso immediately follows:

> Provided, That no common carrier or other public utility shall make any general increase in its rates or charges which were in effect on September 15, 1942, unless it first gives thirty days notice to the President, or such agency as he may designate, and consents to the timely intervention by such agency before the Federal, State or municipal authority having jurisdiction to consider such increase.

In proceedings since the enactment of this proviso, the Interstate Commerce Commission has frequently stated, as it does in the instant report (sheet 18), that the provisions of the Price Control and Stabilization Acts, "except those pertaining to the giving of notice and consent to intervene to the designated Federal agent, made no

changes in or additions to the Interstate Commerce Act with respect to the rates, fares, and charges of common carriers by railroad."

Intervenor concedes that the Price Control and Stabilization Acts do not limit the powers of the Commission under [fol. 1140] the Interstate Commerce Act. Cf. *Vinson v. Washington Gas Light Co.*, — U. S. — (decided March 27, 1944). Intervener merely requests that the Commission exercise its powers under the Interstate Commerce Act consistently with its statements in *Increased Railway Rates, Fares, and Charges*, 1942, 255 I. C. C. 357, 392-393:

> The Interstate Commerce and the Price Control and Stabilization Act declare important congressional policies which are not contradictory, but are complementary. In the administration of the Interstate Commerce Act, we give consideration, when applying the standards of lawfulness of charges made under that act, to the fact that for a Nation at war a major problem is to prevent undue inflation of prices.

If, in stating that the Price Control and Stabilization Act made no changes or additions to the Interstate Commerce Act, the Commission implied that it was free to disregard the policies embodied therein, it erred, as a matter of law, because, as the United States Supreme Court has recently said, in *Southern S. S. Co. v. National Labor Relations Board* (1942) 316 U. S. 31, 47; 62 S. Ct. 886, 894:

> Frequently the entire scope of Congressional purpose calls for careful accommodation of one statutory scheme to another, and it is not too much to demand of an administrative body that it undertake this accommodation without excessive emphasis upon its immediate task.

Again in *McLean Trucking Co. v. United States* (1944) 64 S. Ct. 370, 377, the Supreme Court stated:

> But in executing these policies the Commission may be faced with overlapping and at times inconsistent policies embodied in other legislation enacted at different times and with different problems in view. When this is true, it cannot without more ignore the

latter. The precise adjustment which it must make, however, will vary from instance to instance depending on the extent to which Congress indicates a desire [fol. 1141] to have those policies leavened or implemented in the enforcement of the various specific provisions of the legislation with which the Commission is primarily and directly concerned.

Intervener's concept of the policies of the Price Control and Stabilization Acts [15] applied to common carriers, is as follows:

(1) Common carriers should be permitted to earn revenues sufficient to enable them to furnish adequate and efficient services during the war. This is true because such services are necessary to the effective prosecution of the war.

(2) Common carriers should not be authorized to increase rates, fares, and charges above the reasonable minimum unless added revenues are necessary. In *Passenger Fares and Surcharges, supra,* the Commission found that Southern coach fares of 1.5 cents per mile were reasonable.

(3) Common carriers, if permitted to earn high profits and to recoup for prewar deficits when possible from favorable results of increased volume of traffic at rates and fares in effect on September 15, 1942, [fol. 1142] should certainly not be permitted to take advantage of inflationary wartime conditions to make *increases* of rates, fares, and charges not presently necessary.

The complementary nature of these policies with those of the Interstate Commerce Act are readily apparent. Section 15a (2) of that Act provides, in part, as follows:

In the exercise of its power to prescribe just and reasonable rates the Commission *shall* give due consideration, among other factors. * * * to the need,

[15] For an analysis of the wartime stabilization program and its policies see *Lincoln Sav. Bank of Brooklyn v. Brown,* 137 F. 2d 228; *United States Gypsum Co. v. Brown,* 137 F. 2d 360; *Philadelphia Coke Co. v. Bowles,* 139 F. 2d 349.

> *in the public interest*, of adequate and efficient railway transportation service at the *lowest cost* consistent with the furnishing of such service; and to the *need of revenues* sufficient to enable the carriers, under honest, economical, and efficient management to provide such service. (Emphasis added.)

The above two factors specified by section 15a (2) are also the principal requisites in any determination of just and reasonable rates. The United States Supreme Court has stated; "The rate-making process under the (Natural Gas) Act, i. e., the fixing of 'just and reasonable' rates, involves a balancing of the investor and consumer interests." *Power Comm'n v. Hope Gas Co.*, *supra*, 320 U. S. 591, 603.

During this war, except for common carrier and public utility rates, consumers interests in prices are largely in the hands of the Economic Stabilization Director and the agencies associated with him in the stabilization program, including the Office of Price Administration. For this protection of consumer interests, Congress has established general policies, set forth in the first sections of the Price [fol. 1143] Control and Stabilization Acts. Intervenor contends that the Commission, an agency of Congress, should, in its consideration of the policy requirements specified by Congress in section 15a (2) of the Interstate Commerce Act, include within such consideration the relation of the Congressional policies of the Price Control and Stabilization Acts. *Jersey City v. Hudson & M. R. Co.*, (unreported).

In *Increased Railway Rates, Fares, and Charges, 1942*, *supra*, the Commission said (255 I. C. C. 392):

> We recognize the congressional objectives of the Price Control and Stabilization Acts to prevent inflation during the present emergency, and in the administration of those statutes the Director of Economic Stabilization and the Price Administrator will have our cooperation.

Intervenor respectfully requests that the Commission fulfill its promise in this proceeding.

E. The Commission's Decision Is Unwarranted Interference with the Cooperation between the President of the United States and the State Commissions in the Latters'

Efforts to Aid in the Effective Prosecution of the War, as Requested of Them by the President.

In his "Hold-The-Line" order of April 8, 1943, 8 F. R. 4681, the President of the United States stated:

> 4. The attention of all agencies of the Federal Government, and of all State and municipal authorities, concerned with the rates of common carriers or other public utilities, is directed to the stabilization program of which this order is a part so that rate increases will be disapproved and rate reductions effected, consistently with the Act of October 2, 1942, and other applicable federal, state or municipal law, in order to keep down the cost of living and effectuate the purposes of the stabilization program.

[fol. 1144] In the exercise of its powers, the Kentucky Railroad Commission gave in its decision, as one ground for denial of the increases, this request for cooperation in the wartime stabilization program.[16] Intervener appeared in all four State proceedings as a Protestant. Therefore, in these proceedings we have four States acting according to the request of the President of the United States, the Economic Stabilization Director, and the Price Administrator, consistently with a general policy established by Congress as necessary to aid in the effective prosecution of the war. If the Interstate Commerce Commission adheres to its present decision, it will be obstructing this cooperative program and policy.

Under records of facts which contain all of the doubts pointed out by the dissenting opinion, should the Interstate Commerce Commission, an agency of Congress, frustrate this cooperation by pushing aside the wartime stabilization program of Congress as a consideration not to be taken into account? Certainly it will not if it gives effect to the fundamental principle that it should not interfere with the exercise of State powers unless the justification shall "clearly appear" and shall "conform to a high standard of certainty." *Florida v. United States, supra* (282 U. S. 219), *Illinois Central Railroad Co. v. Public Utilities Commission*, 245 U. S. 493.

---

[16] Kentucky record, Exhibit No. 2, pp. 10-12, inclusive.

Intervener respectfully submits that the records and the Commission's report in these proceedings do not show any clear and certain justification for the Commission's inter- [fol. 1145] ference with the State Commission's cooperation in the effective prosecution of the war in accordance with the wartime stabilization program.

Conclusion

In summary, Intervenor submits that in 1943 Respondents were earning more than a fair rate of return; that their increases of coach fares since September 15, 1942, resulted and will result in unreasonably high profits from unreasonably high fares which are possible only by taking undue advantage of wartime conditions; that the Commission's approval of such increases is contrary to the policy of section 15a (2) of the Interstate Commerce Act and the complementary policies of the Price Control Act and Stabilization Act; that the Commission's decision in these proceedings is in violation of the reserved constitutional rights of the States of Alabama, Kentucky, North Carolina, and Tennessee, and is unwarranted interference with the cooperation of the duly authorized State Commissions of those States in the President's program for the effective prosecution of the war.

[fol. 1146] Intervenor respectfully requests that the Commission reconsider its decision of March 25, 1944, and hold that these records do not contain any clear and certain justification for the exercise of Federal jurisdiction.

Respectfully submitted, Chester A. Bowles, Price Administrator. Richard H. Field, General Counsel. Bernard M. Fitzgerald, Transportation Counsel.

David F. Cavers, Assistant General Counsel. Warren Price, Jr., Chief Counsel, Common Carrier Section. M. D. Miller, Attorney.

Certificate of Service

I hereby certify that I have served the foregoing document upon all parties of record in this proceeding by mailing a copy thereof, properly addressed, to each party.

Dated at Washington, D. C., this 26th day of April, 1944.

M. D. Miller, Attorney.

[fol. 1147]

APPENDIX—Page 1

17 Southern Railroads

Revenues, Expenses and Service Operating Ratios

1943

	Respondent	Total Operating			Freight Service Assigned			Passenger Service Assigned		
		Revenues (thousand dollars)	Expenses	Operating Ratio (%)	Revenues (thousand dollars)	Expenses	Operating Ratio (%)	Revenues (thousand dollars)	Expenses	Operating Ratio (%)
1	Ala. G. S.	23538	12254	52.1	17768	9730	54.8	5770	2524	43.7
2	A. B. C.	7211	5312	73.7	6374	4392	68.9	837	920	109.9
3	A. C. L.a	153601	81783	53.2	103858	54285	52.3	49743	27497	55.3
4	Cent. Ga.	38930	23180	59.5	27828	17107	61.5	11102	6070	54.7
5	C. & O.a	208513	115045	55.2	182836	95579	52.3	25677	19467	75.8
6	C. N. O. & T. P.	37214	19764	53.1	28643	15505	54.1	8571	4259	49.7
7	Clinchfielda	12797	6202	48.5	12583	5964	47.4	214	238	111.2
8	G. M. & O.a	37859	24720	65.3	34634	22030	63.6	3213	2679	83.4
9	I. C. (incl. Y. & M. V.)	247637	159790	64.5	200349	127512	63.6	47288	32278	68.3
10	L. & N.a	208799	118152	56.6	154592	90459	58.5	54207	27694	51.1
11	N. C. & St. L.a	42284	26459	62.6	31696	20490	64.7	10588	5969	56.4
12	Norfolk-So.a	8378	6182	73.8	7912	5595	70.7	466	587	126.0
13	SL–SF	107427	71055	66.1	78495	54552	69.5	28932	16504	57.0
14	SAL	137258	80824	58.9	89839	54920	61.1	47419	25904	54.6
15	Southern	245532	136604	55.6	177020	101633	57.4	68512	34971	51.0
16	Tenn. Cent.	4842	3436	71.0	4071	2824	69.4	771	612	79.4
17	W. of A.	5342	3106	58.1	3344	2333	69.8	1998	773	38.7
	Total 17 Southern Roads	1527162	893868	58.5	1162788	684910	58.9	364362	208946	57.3

a Revenues and expenses assigned to passenger and freight services from 1943 annual report to the I. C. C.

[fol. 1148]

APPENDIX—Page 2

Comparison of 1943 Actual and Estimated Service Operating Ratios, from Available 1943 Annual Reports

	Actual		Estimated	
	Passenger	Freight	Passenger	Freight
A. C. L.	55.3	52.3	53.1	53.3
C. & O.	75.8	52.3	75.9	52.3
Clinchfield	111.2	47.4	119.3	47.2
G. M. & O.	83.4	63.6	95.7	62.5
L. & N.	51.1	58.5	52.6	58.0
N. C. & St. L.	56.4	64.6	60.0	63.4
St. Louis-San Francisco	57.0	69.5	60.7	68.1
Total 7 Roads	58.0	57.4	58.9	57.1

6—574

[fol. 1149]

APPENDIX—Page 3

Operating Ratios

Ratios shown by Exhibits introduced at Hearings.

12 Alabama Railroads

Docket 28963, Ex. 17, p. 16

	Passenger	Freight
1936	126	67
1937	121	69
1938	128	68
1939	128	66
1940	127	67
1941	107	62
1942	68	58
1943 — The Commission's report states: "The passenger operating ratio of 1943 was lower than for 1942."		

10 Kentucky Railroads

Docket 29060, Exs. 13 and 14

	Passenger	Freight
1936	131.4	56.6
1937	127.5	60.1
1938	135.3	60.3
1939	135.5	58.1
1940	136.8	57.9
1941	118.5	57.4
1942	75.2	54.9
1st. 6 mo. 1943 (est.)	61.0	55.8

8 Tennessee Railroads

Docket 29037, Ex. 13

	Passenger	Freight
1936	123.8	63.7
1937	118.1	66.5
1938	114.8	64.4
1939	115.7	62.9
1940	127.4	63.5
1941	110.0	59.8
1942	72.5	57.2
1st. 9 mo. 1943 (est.)	56.0	58.6

7 North Carolina Railroads

Docket 29036, Ex. 20, p. 4

	Passenger	Freight
1936	123.6	60.0
1937	120.9	62.6
1938	130.2	63.4
1939	128.5	60.2
1940	127.1	60.3
1941	103.7	57.0
1942	63.9	54.7
1st. 9 mo. 1943 (est.)	52.3	54.7

499

Rates of Return

17 Southern Railroads
(Dollar figures in thousands)

			(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
			Rate Base			Prior to Deduction of Federal Income Taxes			After Taxes			
	Proceeding*	Respondent	Intervenor's December 31, 1942	Respondents December 31, 1942	Net Ry. Op. Income 1943	Net Ry. Op. Inc. less Rent for Leased Roads 1943	1943 Rate of Return on Intervenor's Base	1943 Rate of Return on Respondents Base	Net Ry. Op. Income 1943	Net Ry. Op. Inc. less Rent for Leased Roads 1943	1943 Rate of Return on Intervenor's Base	1943 Rate of Return on Respondents Base
1	AT	Ala. G. S.	$36284	$42150	$9196	$9176	25.3%	21.8%	$3001	$2981	8.2%	7.1%
2	A	A. B. C.	6705	8493	1042	1042	15.5	12.3	515	515	7.7	6.1
3	ANT	A. C. L.	278406	320954	58205	57997	21.0	18.1	15705	15497	5.6	4.9
4	AT	Cent. Ga.	92008	114012	13041	11657	12.7	11.4	7346	5962	6.5	6.4
5	K	C. & O.	515112	633644	86160	86110	16.7	13.6	37216	37166	7.2	5.9
6	KT	C. N. O. & T. P.	55235	90306	15435	15410	27.9	17.1	6441	4704	8.5	7.1
7	KNT	Clinchfield	8741	74966	5929	3756	43.0	7.9	5233	3060	35.0	7.0
8	AKT	G. M. & O.	71263	86291	8726	8236	11.6	10.1	5919	5429	7.6	6.9
9	AKT	I. C. & Y. & M. V.	338833	701120	65526	64024	18.9	9.3	38222	36720	10.8	5.5
10	AKNT	L. & N.	408021	519307	81790	81488	20.0	15.7	25513	25211	6.2	4.9
11	AKT	N. C. & St. L.	57962	73025	13179	12375	21.4	18.0	5083	4279	7.4	7.0
12	N	Norfolk-So.	19195	21806	1308	1235	6.4	6.0	943	870	4.5	4.3
13	AT	SL-SF	379287	432191	30360	30246	8.0	7.0	22489	22475	5.9	5.2
14	AN	SAL	264760	346972	44704	44123	16.7	12.9	28704	28123	10.6	8.3
15	AKNT	Southern	538522	653509	92368	89372	16.6	14.1	35745	32749	6.1	5.5
16	T	Tenn. Cent.	8412	9546	1000	975	11.6	10.5	712	687	8.2	7.5
17	A	W. of A.	7055	10905	1854	1854	26.3	17.0	660	660	9.4	6.1
Total 17 Southern Roads			$3083801	$4139197	$529823	$519176	16.8%	12.8%	$239447	$227088	7.4%	5.8%

* Symbols A, K, N, and T mean that the named railroad was a respondent in the Alabama, Kentucky, North Carolina, or Tennessee proceeding, respectively.

Sources on the following page.

[fol. 1151] APPENDIX—Page 5

Source — Respondents Monthly and Annual reports to the Interstate Commerce Commission:

Column 1—Schedule 211N—Annual Reports
2—Accounts 701, 702, 702½, 708, 716 less 775, 775½, 776, 776½—Annual Reports
3—I. C. C. Revenue and Expense reports for 1943
4—Column 3 less rent for Leased Roads from I. C. C. Income and Balance Sheet reports for 1943
5—Column 4 divided by Column 1
6—Column 3 divided by Column 2
7—Same as Column 3
8—Same as Column 4
9—Column 8 divided by Column 1
10—Column 7 divided by Column 2

[fol. 1152] APPENDIX—Page 6

Estimate of Unit Costs per Coach Passenger Mile

Class I Railroads Southern District

1937–1943

	(1) Expense Assigned to Passenger Service ($000)	(2) Passenger Car Miles (000)	(3) Passenger Miles in Coaches (000)	(4) Passenger Coach Miles (000)	(5) Expense per Passenger or Coach Car Mile (cents) (1)/(2)	(6) Coach Passenger Miles per Coach-Car Mile (3)/(4)	(7) Expense Coach Passenger Miles (cents) (5) ÷ (6)
1937	118,150	517,936	2,085,307	146,443	22.81	14.24	1.60
1938	112,356	488,296	1,433,328	132,193	23.01	10.84	2.12
1939	113,939	495,193	1,782,977	135,339	23.01	13.17	1.75
1940	122,171	514,512	2,219,753	143,285	23.75	15.49	1.53
1941	134,730	563,619	3,332,005	166,846	23.90	19.97	1.20
1942	174,303	667,340	6,599,090	223,290	26.12	29.55	.88
1943	219,337*	792,387	12,177,590	296,995*	27.68	41.00	.68

* Estimated.

Source: I. C. C. Statistics of Railways in the U. S.

[fol. 1153]

Effect of Reduction of All Southern Coach Fares to 1.65 cents per mile

17 Southern Railroads
1943

Computations	Coach Passenger-Miles	Revenues
Total, 1943	10,750,784,000	$192,496,971
(From Reports To Commission) Furlough fares (12% @ 1.25¢ per mile. See Ala. record, Ex. 27)	1,290,098,000	16,126,225
Non-furlough fares	9,460,686,000	$176,370,746
Revenue per passenger-mile, coaches, non-furlough		1.864¢

The average revenue per passenger-mile, non-furlough, at the rate of 1.65 cents per mile would be 1.4¢, because 1.65¢ is 75% of 2.2 cents (i. e., 1.4¢ is 75% of 1.864¢); note also the correlation of this figure with those on pages 5 and 6 of this petition). The difference between the revenues of the two fares would be .464¢, which, multiplied by non-furlough coach passenger-miles of 9,460,686,000, indicates probable reduction in revenues of $43,897,583, which would have the following effect upon the carriers' revenue status:

Total Passenger Revenues, 1943	$364,362,000
Reduction	43,897,583
Reduced Revenues	320,464,417
Passenger Expenses, 1943	208,946,000
1943 Operating ratio at reduced revenues	65.2%
Compare, 1943 Operating ratio (p. 1 of this Appendix)	57.3%

[fol. 1154] BEFORE THE INTERSTATE COMMERCE COMMISSION

Docket No. 29037

Tennessee Intrastate Fares

MOTION FOR ENTRY OF ORDER—Filed May 1, 1944

[fol. 1155] Come now, by counsel, the railroads operating in the State of Tennessee, respondents in the above-entitled proceeding, and respectfully show to the Commission as follows:

I

That in the report of the Commission herein, dated March 25, 1944, it was stated as follows:

> "In accordance with our practice in such proceedings, we shall leave to respondents and the respective State Commissions the matter of adjusting the intrastate fares to conform to these findings. If this is not accomplished within 30 days from the service of this report, consideration will be given to the entry of an appropriate order."

[fol. 1156] Said report was released and served on March 30, 1944.

II

That, no action having been taken by the Railroad and Public Utilities Commission of the State of Tennessee, counsel for these respondents on April 19, 1944, addressed a letter to said Commission wherein reference was made to the above-quoted language from the report of this Commission, and wherein it was further said:

> "On behalf of the railroads operating in Tennessee, we are writing to advise that they are prepared to adjust the intrastate fares to conform with the findings referred to and within the prescribed time limit of 30 days, if authorized to do so by your Honorable Commission without the entry of a formal order by the Interstate Commerce Commission.
>
> "It is respectfully requested that such authorization be given."

III

That although the time limit of 30 days as fixed by this Commission has now expired, the Railroad and Public

Utilities Commission of the State of Tennessee has failed to authorize these respondents to adjust the intrastate fares to conform to the findings contained in said report of March 25, 1944, and respondents, therefore, have been and are unable to proceed to so adjust said intrastate fares.

[fol. 1157-1158] IV

The premises considered, these respondents move that the Commission proceed forthwith to enter an appropriate order.

Respectfully submitted, W. A. Northcutt, James B. Gray, Charles Clark, Frank W. Gwathmey, Attorneys for Respondents.

May 1, 1944.

Certificate of Service

I hereby certify that I have this day served the foregoing motion upon all parties to this proceeding by mailing a copy thereof by first-class mail duly addressed to each such party.

Dated at Washington, D. C., this 1st day of May, 1944.

Frank W. Gwathmey.

[fol. 1159] At a General Session of the Interstate Commerce Commission, Held at Its Office in Washington, D. C., on the 8th Day of May A. D. 1944

No. 28963

Alabama Intrastate Fares

No. 29000

Kentucky Intrastate Fares

No. 29036

North Carolina Intrastate Coach Fares

No. 29037

Tennessee Intrastate Fares

Order

These proceedings having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been made, and the Commission, on

March 25, 1944, having made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof; and

It appearing, That as set forth in said report, and in accordance with the practice in such proceedings, the Commission left to respondents herein and the respective State Commissions, for a period of 30 days from March 30, 1944, the date of service of said report, the matter of adjusting the intrastate passenger fares under consideration in these proceedings to conform to the findings and conclusions made in said report, and that no such adjustment of the said intrastate fares has been made or authorized by the respective State Commissions:

It is ordered, That respondents in each of these proceedings, according as they participate in the transportation, be, and they are hereby, notified and required to cease and desist, on or before July 1, 1944, upon notice to this Com-[fols. 1160-1162] mission and to the general public by not less than 30 days' filing and posting in the manner prescribed in section 6 of the Interstate Commerce Act, and thereafter to abstain, from practicing the undue prejudice and preference and the unjust discrimination found in said report to exist.

It is further ordered, That said respondents, according as they participate in the transportation, be, and they are hereby, notified and required to establish, on or before July 1, 1944, upon notice to this Commission and to the general public by not less than 30 days' filing and posting in the manner prescribed in section 6 of the Interstate Commerce Act, and thereafter to maintain and apply, passenger fares for intrastate transportation in the respective States which shall remove the undue prejudice and preference and the unjust discrimination found in said report to exist; provided, that the resulting aggregate charge made by any of said respondents for intrastate transportation in any of the States shall not exceed the aggregate charge made for like accommodations and for a like distance by the same respondent for interstate transportation to, from, or through such State.

And it is further ordered, That this order shall continue in force until the further order of the Commission.

By the Commission. W. P. Bartel, Secretary. (Seal.)

[fol. 1163] [File endorsement omitted.]

[fol. 1164] IN UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF KENTUCKY

Civil Action No. 706

THE STATE OF ALABAMA AND PUBLIC SERVICE COMMISSION, Plaintiffs,

vs.

THE UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, Defendants

PETITION—Filed June 10, 1944

1

The petitioners and plaintiffs, State of Alabama and the Public Service Commission (of Alabama), bring this action against the United States of America and the Interstate Commerce Commission (the latter hereinafter called the Commission), for the purpose of enjoining, setting aside, and annulling orders of the Commission issued on May 8, 1944, in a proceeding before it entitled "Alabama Intrastate Fares" and identified as Interstate Commerce Commission's Docket No. 28963-*1*, although sometimes identified as Docket No. 28963.

[fol. 1165] 2

The plaintiff, State of Alabama, is a sovereign state, and the Public Service Commission is a department thereof, created by the laws of said State, and vested with authority, among other things, to regulate and prescribe just and reasonable intrastate railway passenger fares in both coaches and other cars. The domicile of the plaintiffs and petitioners, for all purposes hereto pertinent, is at the State Capitol, Montgomery, Alabama.

3

The jurisdiction of this Court is invoked pursuant to the provisions of Sections 41, subsection (28), 43 to 48, inclusive, Title 28, United States Code, and the defendant, United States of America, is sued pursuant to the provisions thereof.

4

The defendant, Interstate Commerce Commission, is an administrative commission, created pursuant to the provisions of the Interstate Commerce Act (Title 49, U. S. Code).

[fol. 1166]

5

The hereinafter mentioned Louisville and Nashville Railroad Company is a corporation existing under and by virtue of the laws of the Commonwealth of Kentucky, and domiciled in Louisville, Kentucky, within the jurisdiction of this Court, and was one of the original petitioners to the hereinafter described proceeding before the Commission.

6

On or about October 26, 1942, after having been permitted to increase their interstate passenger fares to 2.2 cents per mile by the Commission, the Alabama Great Southern Railroad, Alabama Tennessee and Northern Railroad Corporation (John T. Coehrane, Jr., Trustee), Atlanta, Birmingham and Coast Railroad, Atlantic Coast Line Railroad, Central of Georgia Railway (M. P. Calloway, Trustee), Gulf, Mobile and Ohio Railroad, Illinois Central Railroad, Louisville and Nashvillle Railroad, Nashville, Chattanooga and St. Louis Railway, St. Louis-San Francisco Railway (J. M. Kurn and John G. Lonsdale, Trustees), Seaboard Air Line Railway (L. R. Powell and Henry W. Anderson, Receivers), Southern Railway Company, Tennessee, Alabama and Georgia Railway, and the Western Railway of Alabama (all corporations, although [fol. 1167] those designated are operated by trustees or receivers), filed with the Public Service Commission (of Alabama) tariffs designed to become effective on December 1, 1942, increasing numerous intrastate passenger fares to 2.2 cents per mile.

The Public Service Commission (of Alabama) ordered a suspension of the tariffs and instituted an investigation under Docket No. 6818, naming the said railroads parties respondent thereto. After a full and complete hearing wherein each and every party respondent was given ample opportunity to offer evidence as to any need or justification for such increase, and no party respondent offering evidence justifying same, the Public Service Commission (of

Alabama) found that the parties respondent had failed to show that they needed any additional revenue; that the evidence indicated that said respondents had ample revenue to take care of their operating expenses and in addition earn a reasonable return on their investments; that is was a matter of common knowledge that passenger traffic of the said railroads in Alabama was such that it was seldom when any railroad could furnish seating capacity for the transportation of intrastate passengers (traveling in coaches); that the interstate passengers would have seats while the intrasate passengers would be required to stand; that the difference between interstate [fol. 1168] and intrastate fares did not create any unreasonable discrimination or undue prejudice; and that the respondents' revenues as shown from both freight and passenger operations had increased to an extent without precedent in the history of railroad operations in the United States. Whereupon, the Public Service Commission (of Alabama) issued an order suspending the said tariffs. Despite the fact that the statutes of Alabama provide for an appeal, no party respondent appealed.

On or about the 17th day of March, 1943, the Alabama Great Southern Railroad Company, Atlanta, Birmingham and Coast Railroad Company, Atlantic Coast Line Railroad Company, Central of Georgia Railway Company (M. P. Calloway, Trustee), Gulf, Mobile and Ohio Railroad Company, Illinois Central Railroad Company, Louisville and Nashville Railroad Company, The Nashville, Chattanooga and St. Louis Railway, Seaboard Air Line Railway Company (L. R. Powell, Jr., and Henry W. Anderson, Receivers), Southern Railway Company, St. Louis-San Francisco Railway Company (J. M. Kurn and John G. Lonsdale, Trustees), and the Western Railway of Alabama (hereinafter, for sake of brevity and clarity, being designed as the railroads) filed with the Interstate Commerce Commission a petition seeking an investigation under Sections 2, 13, and 15 of the Interstate Commerce Act of Alabama intrastate passenger coach fares.

[fol. 1169] 8

Almost contemporaneously with the above proceedings, numerous railroad companies followed similar proceedings; first in the States of Tennessee, Kentucky and North

Carolina, and afterwards before the Interstate Commerce Commission. The Commission consolidated all of the proceedings before it. After a hearing, Examiner C. E. Stiles filed a proposed report with the Commission, a part of which, under the subject of "DISCUSSION, ULTIMATE FINDINGS OF FACT, AND CONCLUSION," is hereto attached, marked Exhibit "A," and made a part of this complaint or petition as fully as though incorporated in this paragraph. Thereafter, the Commission made a report, a copy of which is hereto attached, marked Exhibit "B," and made a part of this complaint or petition in like manner with the Examiner's report. Complaints and petitioners then filed an application for reconsideration with the Commission, a copy of which is hereto attached, marked Exhibit "C," and made a part hereof. Under date of May 8, 1944, the Commission issued two original orders and a corrected order, copies of which are hereto attached, marked Exhibits "D," "E," and "F," respectively, each of which is made a part hereof in like manner.

[fol. 1170]

9

Your petitioners or plaintiffs state that the State of Tennessee and the Commonwealth of Kentucky, or their duly acting and constituted authorities, have or are filing in this Court a proceeding similar to this, seeking the same relief and supported by similar evidence. That it will facilitate the work of this Court if all three causes are consolidated into one proceeding, and your petitioners or plaintiffs are favorable to such joint proceeding.

10

Your petitioners or plaintiffs have exhausted all remedies available to them before the Interstate Commerce Commission.

11

Your petitioners or plaintiffs aver that in said proceedings the Interstate Commerce Commission erred, as a matter of law, in the following particuluars and respects:

(a) In ignoring that past deficits suffered from passenger operation by the railroads were compensated for and included in the form of higher freight rates which the Alabama public is now paying.

[fol. 1171] (b) In selecting the months of December, 1942, and 1943, as exemplary of railway operation, as it was in the latter that the railroads paid retroactive wages covering practically an entire year.

(c) In considering interstate troop movements as a ground to increase intrastate passenger fares.

(d) In considering past alleged deficits in passenger operations as a ground for increasing intrastate fares.

(e) In considering the fares paid by the Federal Government as a ground for increasing intrastate passenger fares.

(f) In considering the reduced fare of 1.25 cents per mile allowed military personnel a ground for increasing intrastate fares.

(g) In finding that 2.2 cents per mile a reasonable interstate or intrastate passenger fare.

(h) In finding that the present Alabama intrastate passenger coach fare creates an undue or unreasonable advantage, preference, or prejudice between persons or localities in intrastate commerce on the one hand and interstate or foreign commerce on the other.

(i) In finding that the difference between the present intrastate and interstate passenger coach fares created any undue, unreasonable or unjust discrimination against interstate or foreign commerce.

(j) In finding that increasing the Alabama intrastate fare from 1.65 to 2.2 cents per mile would increase the revenue of the railroads approximately $725,000.00 per year. It is pointed out that while this amount would be collected from the traveling public, the record conclusively discloses that many of the railroads are within the "excess income tax bracket" and under the most favorable conditions or computations could retain at most only 19 per cent of such amount.

[fol. 1172] (k) In finding that the intrastate fares could be used to break down the interstate fares.

(l) In finding that the increased intrastate passenger fares would not result in a material loss in traffic.

(m) In finding that the transportation conditions have not materially changed since the evidence in Ex-parte 148 was compiled.

(n) In finding the present interstate fares to and from points in Alabama reasonable, and in finding the present intrastate fares unreasonable.

(o) In finding the services rendered interstate and intrastate passengers similar.

(p) In finding that the present Alabama intrastate passenger coach fares do not contribute their fair share of the revenue necessary to enable the railroads to render adequate and efficient transportation service under economic management.

(q) In ignoring the stabilization program of the Federal Government as expressed and embodied in the Emergency Price Control Act of 1942, as amended; the Act of October 2, 1942 (Public Law 727, 77th Congress), and Executive Orders of the President of the United States, No. 9250 (October 3, 1942) and No. 9328 (April 8, 1943).

(r) In ignoring the Congressional mandate set forth in Section 15 (a) (2) of the Interstate Commerce Act in the following words:

> "In the exercise of its power to prescribe just and reasonable rates the Commission shall give due consideration, among other factors, to the effect on the movement of traffic by the carrier [fol. 1173] or carriers for which rates are prescribed; to the need, in the public interest, of adequate and efficient railway transportation service *at the lowest costs consistent with the furnishing of such service;* to the need of revenues sufficient to enable the carriers, under honest, economical, and efficient management, to provide such service." (Italics supplied.)

(s) In overruling the application for rehearing.

12

That Sections 13 and 15 of the Interstate Commerce Act, as interpreted by the Commission, exceed congressional

intent, and violate the Tenth Amendment of the Constitution of the United States.

13

That the said Orders of the Commission deprive the citizens of Alabama of property without due process of law in violation of the Fifth and Fourteenth Amendments of the Constitution of the United States.

14

That in the event the said Orders are not set aside, the traveling public in Alabama will suffer irreparable injury [fol. 1174] and damage in the form of excessive passenger fares in intrastate transportation.

15

That in the event the said Orders are not set aside the petitioners or plaintiffs will suffer irreparable injury and damage in that they will be deprived of their valuable right to regulate intrastate commerce and intrastate passenger fares on railroads, and in addition thereto the State of Alabama will suffer irreparable injury and damage in that it will have to pay materially higher passenger fares for its traveling employees.

16

That the present Alabama intrastate coach passenger fare is sufficient to permit the railroads to continue to render the services contemplated within the provisions of Section 15 (a) (2) of the Interstate Commerce Act.

Wherefore, your petitioners and plaintiffs pray:

1. That this Court notify the Interstate Commerce Commission of the filing of this petition, and suggest that the [fol. 1175] Commission of its own initiative and volition suspended the effective date of its order pending the result of this proceeding; that in the event of the Commission's failure so to do, this Court temporarily suspend same as authorized by statute, pending hearing for an interlocutory injunction in order that the general and traveling public within the State of Alabama might not suffer irreparable injury and damage, and in order that neither the State of Alabama nor the Public Service Com-

mission (of Alabama) suffer irreparable injury and damage.

2. That a three-judge court be assembled, as required by statute, and that a hearing be had at the earliest possible date to the end that irreparable injury and damage may be prevented by the granting of a temporary restraining order and an interlocutory injunction.

3. That this proceeding be consolidated with the proceedings instituted by the State of Tennessee and the Commonwealth of Kentucky, or their officials, should this Court deem such appropriate.

4. That a permanent injunction be granted restraining the enforcement, operation, and execution of said Orders of the Interstate Commerce Commission, and that same be annulled and set aside.

[fols. 1176-1214] 5. That your petitioners and plaintiffs be granted such other and further relief as may be proper and just in the premises.

Respectfully submitted, State of Alabama Public Service Commission, by William N. McQueen, Acting Attorney General, Forman Smith, Assistant Attorney General.

Duly sworn to by Forman Smith. Jurat omitted in printing.

[fol. 1215] EXHIBIT "B" TO PETITION

No. 28963 — Sheet 11

Discussion, Ultimate Findings of Fact, and Conclusions

Section 13(4) authorizes us to prescribe intrastate rates only when, after full hearing, we find that the existing rates are imposed by authority of the State and cause "undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce on the one hand and interstate or foreign commerce on the other hand, or any undue, unreasonable, or unjust discrimination against interstate or foreign commerce." We will consider first whether the first of these provisions has been or is

being violated — that relating to undue or unreasonable advantage, preference, or prejudice.

Evidence to sustain an order and finding that intrastate rates are violative of section 13(4) in that they unduly prejudice persons or localities must be of equal dignity and probative value with the evidence required to sustain a finding under section 3. *Barrett Co.* v. *Atchison, T. & S. F. Ry. Co.*, 172 I.C.C. 319, 334. We have frequently found that the evidence to support a finding of undue prejudice and preference must ordinarily establish that such prejudice and preference constitute a source of undue disadvantage to one party and of undue advantage to another. *Rates on Raw Dolomite and Fluxing Stone in Ohio*, 188 I.C.C. 495, 512. No persons who pay the higher interstate fares and no localities are appearing herein to complain of undue or unreasonable advantage, prejudice, and preference, and as far as this record shows, none have complained to respondents. (119, 120, 145, 174, 181, 182, 206) Respondents do not ask relief for any particular persons or places, but seek a State-wide order. In *Rates on Raw Dolomite and Fluxing Stone in Ohio, supra*, at 511, 512, the Commission said:

> We have no authority to increase intrastate rates unless it is clearly shown that they are working injury to shippers or localities in interstate commerce or discriminate unjustly against such commerce. *Dewey Portland Cement Co.* v. *Alton & E. R. Co.*, 176 I.C.C. 671. It is also well settled that a mere difference in rates is not enough to establish such facts. It must be shown that the difference in rates, actual or relative, is the moving factor in creating undue prejudice to [fol. 1216] competing shippers in interstate commerce or in casting an undue burden upon or obstructing such commerce. *Dewey Portland Cement Co.* v. *Atchison, T. & S. F. Ry. Co.*, 174 I.C.C. 87.

That a mere difference in rates does not alone make out a case under section 13(4), see also *Intrastate Rates Within Louisiana*, 164 I.C.C. 600, 616.

Disparities between the intrastate and interstate rates were shown and are described herein. But it is not shown in what way any passenger or locality in interstate com-

merce is injured by this disparity, or how they would be benefited by an increase in the intrastate fares.

No. 28963—Sheet 12

Upon the evidence we find that the intrastate fares here considered are imposed by authority of the State of Alabama; that there is a real and substantial disparity between those fares and the interstate fares applicable in Alabama, the adjoining State of Mississippi, and other southern States; that the interstate fares are not shown to be in excess of maximum reasonable fares; that there is a substantial passenger traffic moving under both intrastate and interstate rates; that interstate and intrastate passengers ride on the same trains in Alabama and receive the same services; and that no injury is shown upon this record to result to the interstate passengers or localities by reason of intrastate passengers being charged lower fares, which would be relieved by increasing the intrastate fares to the interstate level.

Upon these facts it is recommended that the Commission find that the intrastate rates imposed by authority of the State of Alabama have not been shown to cause any undue or unreasonable advantage, preference or prejudice as between persons or localities in intrastate commerce on the one hand and interstate or foreign commerce on the other hand.

Turning now to the second portion of section 13(4), which prohibits and makes unlawful any undue, unreasonable, or unjust discrimination against interstate or foreign commerce caused by rates, fares, or regulations imposed by authority of any state: Section 15a, which is intended, among other things, to insure a fair return for carriers, provides that in the exercise of its power to prescribe just and reasonable rates the Commission shall give due consideration, among other factors, to the need, in the public interest, of adequate and efficient railway transportation [fol. 1217] service at the least cost consistent with the furnishing of such service, and to the need of revenues sufficient to enable the carriers, under honest, economical, and efficient management to provide such service. The Supreme Court, construing the above provision of section 13(4) in

Railroad Comm. of Wisconsin v. *Chicago, B. & Q. R. Co.*, 257 U. S. 563, 585, 586, 589-591, said:

> Intrastate rates and the income from them must play a most important part in maintaining an adequate national railway system. • •
>
> When we turn to paragraph 4, section 13, however, and find the Commission for the first time vested with a direct power to remove "any undue, unreasonable, or unjust discrimination against interstate or foreign commerce," it is impossible to escape the dovetail relation between that provision and the purpose of section 15a. If that purpose is interfered with by a disparity of intrastate rates, the Commission is authorized to end the disparity by directly removing it, because it is plainly an "undue, unreasonable, and unjust discrimination against interstate or foreign commerce," within the ordinary meaning of those words. • • •

No. 28963 — Sheet 13

> Congress, in its control of its interstate commerce system, is seeking in the Transportation Act to make the system adequate to the needs of the country by securing for it a reasonably compensatory return for all the work it does. • • •
>
> Action of the Interstate Commerce Commission in this regard should be directed to substantial disparity which operates as a real discrimination against, and obstruction to, interstate commerce.

At that time section 15a did not read the same as at present, but its general purpose was to secure to the carriers revenues sufficient to enable them, under honest, efficient, and economical management, to provide in the public interest adequate and efficient transportation service, the same as under the present provisions.

The mere showing of a disparity between interstate and intrastate rates is not, when confined to a specific class [fol. 1218] of traffic, sufficient to support a finding of undue, unreasonable, or unjust discrimination against interstate commerce. *Florida* v. *United States*, *supra*; *Florida* v. *United States*, 292 U. S. 1; *Utah Edible Livestock Rates and Charges*, 206 I.C.C. 309, 312.

When we come to consider the question of whether, under the present conditions confronting respondents, the addition of approximately $750,000 of annual revenues from Alabama intrastate passenger traffic is necessary in order to enable them to fulfill their national purposes as contemplated by section 15a, and whether the action of the Alabama Public Service Commission in refusing to permit the increase in fares which will produce approximately this amount constitutes an obstruction to interstate commerce, we must unhesitatingly reply in the negative. Respondents' average operating ratio in 1942 was 68. Respondent's contention that "the loss in revenue directly resulting from the low intrastate fares respondents are now required to maintain, which have been proved with almost mathematical exactness, are all that is needed to justify" the finding sought, must be rejected as an inaccurate statement of the law, and out of harmony with the reasoning of the Supreme Court in the opinion last above quoted. The failure of respondents to receive this additional intrastate revenue is not at the present time casting any undue burden upon interstate commerce.

Upon the facts found it is recommended that the Commission find that the intrastate fares herein considered, imposed by State authority, do not cause any undue, unreasonable, or unjust discrimination against interstate or foreign commerce.

Effect of the Stabilization Act.— The Acting Price Administrator, intervener on behalf of himself and the Director of Economic Stabilization, asks that we give effect to the complementary Congressional policies embodied in the Interstate Commerce Act and in the Price Control and Stabilization Acts, by denying increases where these are not shown to be necessary, either to aid in the effective prosecution of the war or to correct gross inequalities, or where the proposed rates are not shown to be just and reasonable.

No. 28963 — Sheet 14

In his brief intervener argues that the intrastate basis of 1.65 cents per mile is a maximum reasonable basis for [fol. 1219] interstate application. He offered no direct evidence, but relies upon evidence offered by other parties of record. Upon the evidence herein set forth under the head "Reasonableness of Interstate Fares," we have found

that the interstate fares in Alabama are not shown to be in excess of maximum reasonable fares.

The proposed increased fares have not been shown to be necessary, either to aid in the effective prosecution of the war or to correct gross inequalities.

An order discontinuing the proceeding should be entered.

[fol. 1220] EXHIBIT "C" TO PETITION

Before

THE INTERSTATE COMMERCE COMMISSION

ICC Docket No. 28963[1]

ALABAMA INTRASTATE FARES

Intrastate passenger fares in Alabama, Kentucky, North Carolina, and Tennessee, where lower than the corresponding interstate fares, found to cause undue advantage, preference, and prejudice as between persons in intrastate commerce on the one hand and interstate commerce on the other, and unjust discrimination against interstate commerce.

PETITION

OF

THE ALABAMA PUBLIC SERVICE COMMISSION

AND

THE ATTORNEY GENERAL OF ALABAMA

FOR

RECONSIDERATION, REHEARING AND FURTHER ORDER BY THE COMMISSION

[fol. 1221] Comes now the Alabama Public Service Commission, a statutory Commission created by legislative action to regulate all public utilities operating within Alabama, all common carriers by railroad operating in Alabama and all truck and bus lines operating in Alabama, and said statutory authority vested in the Alabama Public Service

Commission authorizes it to prescribe and order, among other things, just and reasonable rates, fares and charges, and to order and prescribe proper schedules for the operation of said utilities, railroads and truck and bus lines, and to generally regulate all matters pertaining to the transportation of property and persons within the State of Alabama, and as reasons for requesting the Commission to order the reopening and reconsideration or for further hearing in this cause, your petitioner respectfully says:

I

That on March 25, 1944, the Commission in its report in ICC Docket No. 28963(1), Alabama Intrastate Fares' [fol. 1222] Sheet 21, Paragraph 5, therein stated that:

> "In accordance with our practice in such proceedings, we shall leave to respondents and the respective State Commissions the matter of adjusting the intrastate fares to conform to these findings. If this is not accomplished within 30 days from the service of this report, consideration will be given to the entry of an appropriate order."

The Alabama Public Service Commission was thereby given the opportunity to adopt and make as its own the findings of the Commission in said report, and said findings are found on Sheet 20 beginning with the 4th paragraph thereon. In said findings the Commission states that the coach fares published by the railroads and suspended by the Alabama Public Service Commission, are just and reasonable fares for the future in Alabama. The same findings are made in respect to certain round trip fares.

II

On Sheet 4, Paragraph 3 thereon, the Commission states:

> "As a basis for a finding of violation of Section 13 (4) of the Act, the interstate fares must be shown to be reasonable. *Georgia Public Service Commission* v. *U. S.*, 283 U. S. 765; *U. S.* v. *Louisiana*, 290 U. S. 70. Therefore, before proceeding to a consideration of the evidence submitted in the respective proceedings bear- [fol. 1223] ing directly upon the issues under Section

13 (4), we shall first consider the evidence bearing upon the reasonableness of the interstate fares."

The Commission then proceeds in said report to justify its order under the *Georgia Public Service Commission* v. *United States decision,* 283 U. S. 765. The Commission then discusses on Sheets 4, 5, 6, 7, 8, 9, and 10 the level of the interstate fares, and then explains the deficit and increases of respondent; the various difficulties encountered by respondents in the transportation of troops in the Armed Forces of the Nation. The Commission generally tends to show that it has made an investigation of said interstate fares. The statement of the Commission in regard to the reasonableness of the interstate fares that we submit is erroneous, as in no part of the investigation made by the Commission in Docket 28963(1) did the Commission receive any evidence, nor did respondents submit any evidence which purports to show that said interstate coach fare of 2.2 cents has been found by the Commission as just and reasonable for the transportation of passengers in coaches in Alabama, or in interstate commerce.

Commission entered into its first comprehensive investigation of interstate fares and charges, said investigation [fol. 1224] being reported in 214 ICC 192. In this investigation, the Commission sought to determine what would be the reasonable interstate fares to apply not only in the Southern District but throughout the United States. In said cause the Commission segregated the Southern District in its report and order and the Commission found that the basic interstate coach fare for application in the Southern District of 1.5 cents per mile was *not unreasonable or otherwise unlawful.* In the same findings, the Commission found that reasonable interstate maximum coach fares for the future would be 2 cents per mile.

In *Ex Parte* 148 the Commission granted a 10 per cent increase on all passenger fares to apply in the movement of passengers in interstate commerce. *Ex Parte* 148 was not an investigation — it was an application by the rail carriers of the Nation seeking certain increases in their fares and charges and in their rates applying on the movement of property in interstate commerce purportedly to defray additional cost of operation brought about by the entry of this Nation into the present World War. In *Ex Parte* 148 the Commission made no investigation, nor

did it measure in any way any rate, any fare, or any charge, but instead permitted the petitioners to submit a general statement in which it was shown what the increases in operation cost were, and the added cost of materials necessary in the operation of the various railroad systems. On that showing alone, the Commission entered its order granting a 10 per cent increase in passenger fares.

[fol. 1225] We submit to the Commission that the statement that they have made an investigation and measured the 2.2 cent fares applying in interstate commerce in the Southern District is erroneous with the exception of the investigation which it made in Passenger Fares and Surcharges, *supra*, 214 ICC 192, in 1936.

Certainly the Commission cannot justify its findings based upon the earnings of respondents in 1942 compared with the deficit of respondents in 1936. For instance, it is shown in Paragraph 3, Sheet 6, that the Alabama respondents in 1936 had a passenger deficit of $30,134,958. In the same paragraph it is shown that the Alabama respondents had a passenger income in 1942 of $31,566,377, or a change in their passenger situation of $61,701,336 from 1936 to 1942. In the same paragraph the Commission shows average annual deficits for the period beginning with 1936 and ending in 1942.

Alabama patrons who consume passenger transportation certainly cannot be made to reimburse respondents for their alleged deficits. While the Commission has seriously considered the alleged deficits shown from passenger operation over past years, it has ignored the fact that the records show without dispute that the alleged deficits were covered and included in the freight rates imposed upon the people of Alabama, which they have been, and are now paying. The railroads seek not only to regain the alleged deficits, [fol. 1226] but also to profit from present operations, and in addition thereto, retain that part of freight tariff allowed because of past deficits from passenger operations. The ultimate effect of the Commission's order is to impose two charges for passenger service.

On Sheet 8, Paragraph 2 thereof, the Commission states that respondents have expended large sums of money in remodeling and air conditioning their passenger equipment; that respondents have purchased Diesel-powered locomotives for passenger train service and have modernized a large number of passenger cars, which is admitted by

protestant. On the other hand, the evidence of record is that much of this equipment is operated on streamlined trains and on other through trains and is not available to the average passenger residing in the smaller towns and villages in Alabama as evidenced by the fact, and as shown by the record, that most of the deluxe trains operated in Alabama by respondents do not stop to discharge or take on passengers excepting at a very limited number of Alabama cities, such as Birmingham, Mobile, and Tuscaloosa. Therefore, these monies which were expended by respondents were to make their trains attractive and thereby entice interstate passengers away from competing modes of transportation, and these improvements were not made to accommodate the average passenger in Alabama, nor is the [fol. 1227] "*average intrastate Alabama passenger*" in position to ride such trains.

In Paragraph 3, Sheet 8, the Commission discusses wartime operation of passenger trains in Alabama and the Commission states that added burdens have been placed on respondents' operation due to the number of troop trains. Does the Commission rule that civilian intrastate passengers in Alabama shall defray the added cost of operation occasioned by the fact that the Government of the United States is transporting many thousands of troops by passenger trains and that such movements of military and naval personnel create much deadhead movement, etc.?

On Sheet 9, Paragraph 3 thereon, the Commission states that a great many passenger trains have been added to the operation of respondents, which your protestant admits; however, if the Commission will study the record and particularly Exhibit 18 submitted by respondents, it will find that the only operating witness, who appeared for any respondent before the Alabama Commission in this cause, stated that not a single passenger train had been added for the accommodation of civilian travelers. The same witness stated to the Alabama Commission, as shown in Exhibit 18, that, as a matter of fact, less trains were in operation in Alabama at the time of the hearing before the Alabama Commission than were in operation in 1940; therefore, all added sections to passenger trains [fol. 1228] must have been occasioned by the movement of troops and naval personnel.

III

Your respondent states that after the Commission had granted the 10 per cent increase on passenger fares in Ex Parte 148, the Alabama Commission immediately issued its order granting the same increase, thereby increasing the coach fares intrastate in Alabama to 1.65 cents per mile, and that the increase was ordered by the Alabama Commission on intrastate fares to defray the added expenses of respondents in the operation of passenger trains and its freight trains, or any of its operation due to war conditions.

It is averred by the Commission, on Sheet 9 in the last paragraph thereon, relative to the availability of 1.25 cent fares for the movement of military and naval personnel traveling from their station on furlough, that respondents have not sought an increase on said fares, which we admit. On the other hand, we point out to the Commission that personnel of the Navy and Army traveling on furlough cannot travel on any trains excepting inferior trains and they are not permitted to travel on the so-called "deluxe streamlined trains." The action of respondents in this respect, by not increasing the fares, is commendable, but not chargeable to Alabama citizens.

[fol. 1229] On Sheet 10 of the report, the Commission predicts that there will be a continued increase in passenger revenues during the coming year, and we respectfully refer the Commission to its own records and to the reports issued by the Bureau of Statistics.

IV

Respondents, throughout the proceeding before the Alabama Commission and before the Commission in the Section 13(4) investigation, stressed the matter of unification in fares, and respondents stated to the Commission that coach fares were uniform throughout the Nation with the exception of four states in the Southern District, which states denied the increase from 1.65 cents per mile to 2.2 cents per mile for coach passenger fares. However, the Commission disregarded altogether the fact, as shown by the record, that first class passengers traveling in intrastate commerce in Georgia have a fare of 2.2 cents per mile, and the Commission further disregarded the fact, which the record shows, that respondents operating in Georgia com-

plained to the Commission relative to the order issued by the Georgia Public Service Commission in 1936, and that the Commission held an investigation under Section 13(4), and found that the 2 cent fare per mile (now 2.2 cents per mile due to Ex Parte 148 increases) ordered by [fol. 1230] the Georgia Commission for application on first class fares was just and reasonable and the Commission refused to order an increase in said 2 cent first class fare, applying on intrastate commerce in Georgia. The record shows that an example was made by protestants whereby it was shown that a passenger traveling first class 100 miles in Georgia would pay $2.20, where, on the other hand, if the same passenger traveled today or in the past since 1936 in Alabama, he would pay 3 cents, and since the increase granted by the Commission in Ex Parte 148, would pay $3.30. Therefore, there has been no unity at least in first class fares in the Southern District since 1936. The Alabama intrastate fares have not been uniform, as evidenced by the fact that the I. C., Frisco, and Gulf Mobile never published the 1.5 coach fares, but maintained instead the 2 cent fares.

V

The Commission discusses on Sheets 12 and 13 its power under Section 13(4). Your protestant agrees with the fact that the Commission may remove undue preference on intrastate fares and remove undue prejudice against interstate commerce, but your protestant states that the power of the Commission beyond that under Section 13(4) is *corqm non judice* and void.

[fol. 1231] VI

That respondents' petition filed with the Commission requesting an investigation named three sections of the Act. (1) Section 3, (2) Section 13, and (3) Section 15-A.

Section 15A authorizes the Commission to prescribe just and reasonable rates and said section states: "In the exercise of its power to prescribe just and reasonable rates the Commission shall give due consideration, among other factors, to the effect of rates on the movement of traffic by the carrier or carriers for which the rates are prescribed; to the need, in the public interest, of adequate and efficient railway transportation service at the lowest cost consistent with the furnishing of such service; and to

the need of revenues sufficient to enable the carriers, under honest, economical, and efficient management to provide such service."

Under this Section, it was obviously necessary for the respondents to show that the alleged loss of revenue in Alabama would impair the ability of respondents to offer efficient railway transportation service in interstate and intrastate commerce. No such evidence was offered.
[fol. 1232] Certainly the Commission cannot deem that respondents' revenues are insufficient to maintain efficient, adequate railway transportation service. Protestant's exhibits show without a shadow of a doubt that the earnings of the carriers at the time of the hearing were adequate and would provide sufficient funds not only to maintain efficient and adequate service but, among other things, to pay a considerable amount in excess profits income tax. Therefore, no showing was made whatsoever that the power authorized in Section 15-A should be invoked in this proceeding.

While on the subject, we deem it necessary to point out that while the increased fares, if effective, will cost the intrastate travelers in Alabama some $750,000 per annum, we believe and insist that this sum will not accrue to the benefit of the respondents. The record discloses that numerous respondents are within the so-called "excess income tax bracket" without this additional revenue, and under the most favorable conditions (under our present income tax laws) would benefit only to the extent of 19 per cent of the $750,000.

Section 3 of the Act gives the Commission authority to prohibit carriers "to make, give or cause any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, association, locality, port, port district, gateway, transportation point region, district, territory, or any particular description of traffic, [fol. 1233] etc." Under this section carriers should have appeared prepared to offer evidence showing what localities were prejudiced, the amount of the prejudice and what localities in Alabama were preferred and the amount involved in said preference. As a matter of fact, every witness who appeared and testified in behalf of respondent was asked if they had received any complaint whatsoever from any locality or any person or persons, and in each and

every instance witnesses stated that they had *received no such complaints*. It is pertinent to bring to the Commission's attention at this time that in its own decisions the Commission has stated that it is necessary in Section 3 investigations, to show the amount of the prejudice and the amount of the preference, and that respondents under this section were required to name localities, ports, gateways unduly preferred, and to name the localities unduly prejudiced. Therefore, we submit that the Commission erred in ruling and invoking in any way in its report the power contained in said Section 3 of the Act.

On Sheet 14, Paragraph 2 thereon, the Commission states that, "The intrastate fares in each of the states may be used to defeat or break down the interstate fares, and thereby reduce the revenues on interstate traffic," and an example is made by the Commission illustrating how this defeat of interstate revenue may possibly be accomplished. [fol. 1234] Your protestant does not understand how the learned Commission could arrive at such conclusion. As a matter of fact, counsel for respondents admitted in the record that the use of a combination of an interstate fare and an intrastate fare was illegal. Each and every witness testified as to the possibility of such interstate rates and when asked to name one single instance whereby such a scheme or device had been used, each witness stated that he did not know of a single specific instance. This is the first time in our experience that we have ever been confronted with a situation where any tribunal, in the absence of specific evidence, presumed in effect that this was a Nation of law violators. In fact, we earnestly insist that neither the courts of this Nation nor tribunals will presume that a person will violate the laws, instead the strongest of all legal presumptions is that a person will not violate the laws, and to this end courts have held that, to support a conviction, the evidence must be sufficient to prove such violation beyond a reasonable doubt. This presumption is so fundamental that it does not need citations. The maxim "Injuria non praesumitur" (a wrong is not presumed) has been applicable in our courts for hundreds of years, numerous cases holding that when misconduct or crime is charged, whether in a criminal or civil suit, whether in a direct proceeding to punish the offender or in some col- [fol. 1235] lateral matter, the accused is presumed to be

innocent until proved guilty. We respectfully submit that this alleged evasion, if it exists at all, may be prohibited by police measures on the part of the respondents.

VII

We are unable to understand how the Commission could find that interstate passengers and intrastate passengers are given the same service, particularly in view of the undisputed evidence of witness Ohme commencing on page 350 of the record.

Previously in the record, it was shown that Southern Railway train No. 16 enters Alabama with first stop at Sheffield, where the witness commenced his journey; that witness was seated in a hot coach without air conditioning and found that air conditioned cars carrying only interstate passengers were closed and locked to intrastate passengers; therefore, the witness, being an intrastate passenger, was required to ride in the hot coach. Particular attention is called to the statements of the flagman and conductor of this particular train as stated on page 351 of the record. Further attention is directed to the testimony of witness Ohme (Record page 340), in which he stated that 28 of the [fol. 1236] 56 trains which he inspected were loaded beyond seating capacity, and that 1,097 passengers were standing on said trains. It is further called to the attention of the Commission that the inspections made by witness Ohme were not made during week-ends and were not special inspections, but inspections made in the ordinary discharge of his duties and under usual travel circumstances. The testimony of witness Tobias (Record page 356) shows that this witness travels continuously in the discharge of his duties and that for three months previous to the hearing held by the Commission witness had been unable to find a seat in his travels between Mobile and Montgomery. This witness also travels only during the week and not on week-ends.

On Sheet 15, the last paragraph thereon, the Commission again refers to Section 15-A and the cost of military travel. Does the Commission desire to state that military travel does not travel on fares which are less than the cost to a civilian passenger? As a matter of fact, the record shows, and the Commission states in its report, that all movement of Army and Naval troops move under the so-called equalization agreement whereby military and naval passengers

travel under land grant rates, whether the rail line on which they travel is a land grant road or not, and that the fare assessed on such military and naval travel is calculated on the longest land grant rate applicable in the district, and [fol. 1237] that all lines in the Southern District meet such land grant rates under the so-called equalization agreement.

In conclusion, we would like to point out what is generally known not only to the Commission and to the carriers, but to the general public at large, that of all industries which have waxed fat and are profiting most by the present war emergency, the railroads are among those at the top of the list. We do not believe that either cost of operation or revenue or any other condition is sufficient at this time to justify the exploitation of the residents of Alabama in the form of an approximate 33⅓ per cent increase in intrastate passenger coach fares, particularly in view of the fact that in a majority of cases, of sums so exploited, the railroads will ultimately be able only to retain approximately 19 per cent thereof, under most favorable conditions, due to the present income tax form.

Wherefore, petitioner prays that the Commission reopen this proceeding for reargument and reconsideration, and thereafter issue a report in the nature of the minority report of Commissioner Splawn and other commissioners joining him, and order a dimsissal of procedure. Protestant states that it believes, in view of the above, the Commission will reopen this proceeding for reconsideration [fol. 1238-1240] and rehearing. However, in the event the Commission should deny this petition, it is requested that such order as may issue be made effective thirty days after service thereof, to permit the protestant to either follow the instructions or suggestions of the Commission, or apply for judicial relief therefrom.

Respectfully submitted, Alabama Public Service Commission, J. G. Bruce, Practitioner of Record; William N. McQueen, Acting Attorney General, State of Alabama; Forman Smith, Assistant Attorney General, State of Alabama.

I do hereby certify that I have this day deposited in the United States mail, properly stamped and addressed, a copy of the above and foregoing, to every party of record This the 24th day of April, 1944.

Forman Smith, Assistant Attorney General, State of Alabama.

[fol. 1241] EXHIBIT "E" TO PETITION

Order

At a General Session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 8th day of May A. D. 1944.

No. 28963

Alabama Intrastate Fares

No. 29000

Kentucky Intrastate Fares

No. 29036

North Carolina Intrastate Coach Fares

No. 29037

Tennessee Intrastate Fares

These proceedings having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been made, and the Commission, on March 25, 1944, having made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof; and

It appearing: That as set forth in said report, and in accordance with the practice in such proceedings, the Commission left to respondents herein and the respective State Commissions, for a period of 30 days from March [fol. 1242] 30, 1944, the date of service of said report, the matter of adjusting the intrastate passenger fares under consideration in these proceedings to conform to the findings and conclusions made in said report, and that no such adjustment of the said intrastate fares has been made or authorized by the respective State Commissions:

It is ordered, That respondents in each of these proceedings, according as they participate in the transportation, be, and they are hereby, notified and required to cease and desist, on or before July 1, 1944, upon notice to this Com-

mission and to the general public by not less than 30 days' filing and posting in the manner prescribed in section 6 of the Interstate Commerce Act, and thereafter to abstain from practicing the undue prejudice and preference and the unjust discrimination found in said report to exist.

It is further ordered, That said respondents, according as they participate in the transportation, be, and they are hereby notified and required to establish, on or before July 1, 1944, upon notice to this Commission and to the general public by not less than 30 days' filing and posting in the manner prescribed in section 6 of the Interstate Commerce Act, and thereafter to maintain and apply, passenger fares for intrastate transportation in the respective States which shall remove the undue prejudice and preference and the unjust discrimination found in said report to exist; pro- [fols. 1243-1248] vided, that the resulting aggregate charge made by any of said respondents for intrastate transportation in any of the States shall not exceed the aggregate charge made for like accommodations and for a like distance by the same respondent for interstate transportation to, from, or through such State.

And it is further ordered, That this order shall continue in force until the further order of the Commission.

By the Commission.

Secretary.

[fols. 1249-1293] IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF KENTUCKY, LOUISVILLE DIVISION

No. 706

THE STATE OF ALABAMA AND PUBLIC SERVICE COMMISSION, Plaintiffs,

vs.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, Defendants

No. 707

THE STATE OF TENNESSEE and PORTER DUNLAP et al. Constituting the Railroad and Public Utilities Commission of the State of Tennessee, Plaintiffs,

vs.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, Defendants

No. 708

COMMONWEALTH OF KENTUCKY, AND RAILROAD COMMISSION OF KENTUCKY, Plaintiffs,

vs.

UNITED STATES OF AMERICA, Defendant

ORDER COVERING THREE-JUDGE COURT

Pursuant to section 47 Title 28 of the United States Code, on an application made to me for preliminary or interlocutory injunction, it appearing that the Bill of Complaint in each of the above three cases is brought to enjoin the enforcement of an order of the Interstate Commerce Commission, I hereby call to my assistance for the hearing of the application and cause, the Honorable Elwood Hamilton, Judge of the Circuit Court of Appeals for the Sixth Circuit, and the Honorable Mac Swinford, District Judge of the Eastern and Western Districts of Kentucky.

This 20th day of June, 1944.

Shackelford Miller, J., United States District Judge.

[fol. 1294] IN THE UNITED STATES DISTRICT COURT

No. 706

THE STATE OF ALABAMA AND PUBEIC SERVICE COMMISSION, Plaintiffs,

vs.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, Defendants

ANSWER OF UNITED STATES OF AMERICA—Filed July 7, 1944

Now comes the United States of America, a defendant herein, by counsel, and in answer to the complaint says:

I

Fred M. Vinson, Economic Stabilization Director, by Chester Bowles, Price Administrator, has filed a motion to intervene as a plaintiff in this case and has also filed an intervening complaint seeking to have the order of the Interstate Commerce Commission here involved set aside.

II

A situation is thus presented where one Government agency is seeking to intervene as a party plaintiff in this case and another Government agency, the Interstate Commerce Commission, is a defendant in the same case. Under these circumstances, and in view of the fact that both Government agencies will have an opportunity to present their respective position through their own counsel, the United States has determined to remain neutral in these proceedings in the District Court, without prejudice to its supporting the position of one or the other agency in any appeal which may be taken from the decree of this court.

[fol. 1295] III

Accordingly, the United States neither admits nor denies any of the allegations of the complaint of the above plaintiffs or the intervening complaint of the Economic Stabilization Director.

Eli H. Brown, III, United States Attorney; Robert L. Pierce, Special Assistant to the Attorney General.

Certificate of Service

I hereby certify that a copy of the above answer of the United States has been served upon each of the following named counsel this 7th day of July, 1944:

William N. McQueen, Esq.
Acting Attorney General of Alabama
Montgomery, Alabama
Forman Smith, Esq.
Assistant Attorney General of Alabama
Montgomery, Alabama
Allen B. Crenshaw, Esq.
Interstate Commerce Commission
Washington, D. C.
Charles Clark, Esq.
Southern Railway System
Washington, D. C.
M. D. Miller, Esq.
Federal Office Building, No. 1
Washington, D. C.
Frank W. Gwathmey, Esq.
Shoreham Building
Washington, D. C.
E. D. Mohr, Esq.
Louisville & Nashville RR Company
Louisville, Kentucky

Eli H. Brown, III, United States Attorney.

[fol. 1296] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

Civil Action No. 706

THE STATE OF ALABAMA, ET AL., Plaintiffs,

vs.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, Defendants

ANSWER OF INTERSTATE COMMERCE COMMISSION—Filed July 10, 1944

The Interstate Commerce Commission, hereinafter called the Commission, one of the defendants in the above-entitled action, now and at all times hereafter saving and

reserving to itself all and all manner of benefit and advantage of exception to the many errors and insufficiencies in the plaintiffs' complaint contained, and in the complaint of intervenors, for answer thereunto or unto so much or such parts thereof as it is advised that it is material for it to answer, answers and says:

I

Answering the allegations of paragraphs I, II, III, XLV, IX and X of plaintiffs' complaint, the Commission admits court jurisdiction of the action herein and of the parties thereto.

II

The Commission admits that the plaintiffs herein have a legal right to maintain this action, and that intervenors are proper parties thereto.

III

Further answering other allegations of the complaints, the Commission alleges that proceedings, directly and im- [fol. 1297] mediately concerned in the orders herein involved, were instituted upon the filing of petitions in the Commission, by various railroads operating in the State of Alabama, to wit: the Alabama Great Southern, the Atlanta, Birmingham and Coast, the Atlantic Coast Line, the Central of Georgia, the Gulf, Mobile and Ohio, the Illinois Central, the Louisville and Nashville, the Nashville, Chattanooga and St. Louis, the St. Louis and San Francisco, the Seaboard Air Line, the Southern, the Tennessee, Alabama and Georgia, and the Western of Alabama, in July, 1943, complaining that intrastate coach passenger fares, to, from, and between points within the State of Alabama, except as applied to and by the Gulf, Mobile and Ohio and Illinois Central Railroads, other than in instances where those railroads meet lower rates of competing lines, were unduly preferential of intrastate passengers, unduly prejudicial to interstate passengers, and unjustly discriminatory against interstate commerce, in violation of Section 13 (3) and (4) of the Interstate Commerce Act, seeking under Commission authority, to have such advantage, preference, prejudice, or discrimination removed, as might be found to exist, and to determine what fares and charges, if any, or what maximum or

minimum, or maximum and minimum fares and charges should be prescribed, to remove such advantage, preference, prejudice, or discrimination; said petitions were given Docket No. MC-28963 and hearings were held thereon before an examiner of the Commission at which time evidence was received as submitted by the various parties interested therein, including plaintiffs herein, and thereafter the several parties to the proceedings filed briefs with, and orally argued before the Commission, matters involved in said proceedings, following which the Commission entered its report of March 25, 1944; thereafter plaintiffs filed [fol. 1298] petition for reopening, reargument, and reconsideration of the report of March 25, 1944, which petition was denied by order dated May 8, 1944; under corrected order issued May 24, 1944, rail carrier respondents in the above proceedings were required to establish on or before July 1, 1944, later extended to August 1, 1944, and to thereafter maintain and apply, passenger fares for intrastate transportation in Alabama, and in the States of Kentucky, North Carolina, and Tennessee, also involved in said proceedings under the same report and order, on a basis no lower than the passenger fares presently maintained and applied by the respective respondents, for like accommodations in interstate transportation to, from, and through the said states, and providing that the resulting aggregate charge, made by any of said respondents for intrastate transportation in any of the said states, shall not exceed the aggregate charge made for like accommodations for a like distance by the same respondents in interstate transportation to, from, or through such states.

The Commission further alleges that the proceedings, report, and orders here involved, indirectly and collaterally relate to previous consideration, decisions, and orders of the Commission, in respect to the determination of reasonable passenger fares in interstate commerce, particularly with reference to such fares in Southern Passenger Association territory, generally located east of the Mississippi River and south of the Ohio and Potomac Rivers, such consideration and decisions covering a period of many years prior to the report involved in this action, a summary of that previous consideration, and of reports and orders issued in connection therewith, being set forth in the Commission report of March 25, 1944, 258 I.C.C. 133, at pages

134, 135, 136, and 137, under the heading of "History of Rail Fares." Such interstate fares, so determined by the [fol. 1299] Commission as reasonable, provide the basis of comparison, standard or relation to the intrastate fares here involved. Previous Commission consideration of such interstate fares discloses that passenger fares in said southern territory for many years, up to June 10, 1918, were generally 2.5 cents per mile in all classes of equipment, on which last-named date, the Director General of Railroads increased the fare to 3 cents per mile in all classes of equipment, which said increased fare remained in effect, except that from June 10 to November 30, 1918, an additional charge of 16⅔ percent of the one-way fare was assessed for travel in sleeping and parlor cars, until August 25, 1920, when fares generally were raised to 3.6 cents per mile in all classes of equipment, plus a surcharge in sleeping and parlor cars; that during 1932 and 1933 certain rail carriers operating in southern territory experimented with lower fares, in attempts to attract passenger business in competition with private automobiles and busses, as set forth in said report of March 25, 1944, at pages 134 and 135; the said higher passenger fares of 3.6 cents per mile, established August 26, 1920, with exception of the experimental lower fares established by certain rail carriers, remained in effect until February 28, 1936, when the Commission by its report in Passenger Fares and Surcharges, 214 I.C.C. 174, reviewed railroad passenger fares throughout the nation, found the basic fares to be unreasonable, and prescribed maximum reasonable fares of 2 cents per mile, one-way and round-trip in coaches, and 3 cents per mile one-way and round-trip in Pullman cars, without prejudice to the maintenance of lower fares in coaches or Pullmans, and finding that the Pullman surcharge was unreasonable, requiring the same to be canceled, and finding that the existing experimental fares in southern territory were not unreasonable or otherwise unlawful; that on November 15, 1937 carriers maintaining the experimental coach fares [fol. 1300] of 1.5 cents, increased that fare to 2 cents per mile, but restored the 1.5-cent fare on January 15, 1939, with certain southern lines, including Illinois Central, Mobile and Ohio, St. Louis-San Francisco, and Norfolk and Western Railway, which said lines retained the 2-cent basis, with some exceptions in meeting competition of other lines.

In a proceeding designated as Ex Parte 148, instituted at the instance of the railroads, the Commission by order of January 21, 1942, authorized a 10 percent increase in passenger fares, held to be reasonable and otherwise lawful, and necessary to enable the rail carriers to render adequate and efficient transportation service during the national emergency, the said report being entitled *Increased Railway Rates, Fares, and Charges, 1942*, 248 I.C.C. 545, 565, 566. Under the 10 percent increase of passenger fares the reestablished coach fares of 1.5 cents, which had remained in effect until February 10, 1942, became 1.65 cents, and fares of 2 cents became 2.2 cents and fares of 3 cents became 3.3 cents, with round-trip fares modified to reflect the increases in the one-way fares, such increased fares upon various subsequent dates having also become effective on intrastate traffic in all states. Upon petition of rail carriers in southern territory filed July 14, 1942, the Commission authorized such carriers to increase the lower interstate passenger fares in coaches in that territory to 2.2 cents a mile, the order being entered on August 1, 1942, and such increased fares were published to become effective October 1, 1942, and have since remained in effect on interstate traffic. Thereafter, with the approval of the regulatory authorities of the States of Florida, Georgia, Louisiana, Mississippi, Virginia, and South Carolina, the intrastate one-way and round-trip coach fares and the round-trip fares in sleeping and parlor cars, were increased to the respective levels of the corresponding interstate fares, and the regulatory authorities of Alabama, North Carolina, Tennessee and Kentucky declined to authorize [fol. 1301] the increases, sought by the rail carriers, in one-way and round-trip coach fares, and Alabama and Tennessee also declined to authorize increase in the round-trip fares in sleeping and parlor cars. The refusal of the States of Alabama, North Carolina, Tennessee, and Kentucky to authorize the increases of passenger fares to the level of the interstate fares, was the basis of petitions of rail carriers, in the proceedings herein involved, that the resulting differential in favor of intrastate fares, as compared to the interstate fares, results in a violation of Section 13 (3) and (4) of the Act.

The report of March 25, 1944, embraced, considered, and decided the subject of proceedings in No. MC-28963, *Ala-*

bama Intrastate Fares, and also No. MC-29000, *Kentucky Intrastate Fares*, No. MC-29036, *North Carolina Intrastate Coach Fares*, and No. MC-29037, *Tennessee Intrastate Fares*, and found, (1) that interstate one-way and round-trip coach fares in effect to, from, and through points in Alabama, Kentucky, North Carolina, and Tennessee, and interstate round-trip fares in sleeping and parlor cars in effect to, from, and through points in Alabama and Tennessee are just and reasonable, (2) that intrastate one-way and round-trip coach fares in Alabama, Kentucky, North Carolina, and Tennessee, with certain designated exceptions, and intrastate round-trip fares in sleeping and parlor cars in Alabama and Tennessee, are lower than the corresponding fares applicable interstate, and intrastate generally throughout southern territory, except as to the states named, (3) that conditions affecting the transportation of passengers in coaches in said four states, and in sleeping and parlor cars in Alabama and Tennessee, intrastate, on the one hand, and interstate to, from and through those respective states, on the other, are substantially similar, (4) that interstate passengers in these states travel in the same trains, and generally in the same cars with intrastate passengers, but are forced to pay higher fares [fol. 1302] than the intrastate passengers for like services, to the undue and unreasonable advantage and preference of intrastate passengers, and the undue and unreasonable disadvantage and prejudice of interstate passengers, (5) that respondent rail carriers' revenues under the lower intrastate fares, are less by at least $725,000 per annum in Alabama, $500,000 in Kentucky, $525,000 in North Carolina, and $525,000 in Tennessee, than they would be if those fares were increased to the level of the corresponding interstate fares, and traffic moving under these lower intrastate fares is not contributing its fair share of the revenues, required to enable respondents to render adequate and efficient transportation service, and (6) that the maintenance of such intrastate fares, to the extent that they are lower than the corresponding interstate fares, causes and will cause undue and unreasonable advantage to and preference of persons in intrastate commerce, undue and unreasonable disadvantage to and prejudice against persons in interstate commerce, and undue, unreasonable and

unjust discriminations against interstate commerce, and that this unlawfulness should be removed by increasing the said intrastate fares in the respective states to the level of the corresponding interstate fares contemporaneously maintained by respondent carriers, to, from, and through such states, provided that the aggregate charge made by any of respondents for the intrastate transportation in any of the states, shall not exceed the aggregate charge made for like accommodations for a like distance by the same respondents for interstate transportation to, from, or through such state. These findings were made without prejudice to the right of authorities of the affected states, or of any interstate party, to apply for modification thereof as to any specific interstate fare, on the ground that such fare is not related to interstate fares in such a way as to contravene the provisions of the Interstate Commerce Act. [fol. 1303] The Commission further alleges that the findings and conclusions in said report of March 25, 1944, were and are, and that each of them was and is, fully supported and justified by the evidence submitted in said proceedings as aforesaid, and that, in making said report, it considered and weighed carefully, in the light of its own knowledge and experience, each fact, circumstance and condition called to its attention on behalf of the parties to the said proceedings by their respective counsel.

The Commission further alleges that said report and order, above referred to, was not made or entered either arbitrarily or unjustly, or without proof or contrary to the relevant evidence, or without evidence to support it, that in making said report and order the Commission did not exceed the authority conferred upon it by law, and denies each of and all of the allegations to the contrary contained in the complaints.

Except as herein expressly admitted, the Commission denies the truth of each of and all of the allegations contained in the complaints, insofar as they conflict either with the allegations herein, or with either the statements or conclusions of fact included in the said report of March 25, 1944, above referred to.

V

The Commission specifically denies the allegations contained in paragraphs XII, XIII, XIV, and XV.

All of which matters and things the Commission is ready to aver, maintain, and prove as this Honorable Court shall direct, and hereby prays that said complaint be dismissed.

Interstate Commerce Commission, by Allen Crenshaw, Attorney. Daniel W. Knowlton, Chief Counsel, of Counsel.

[fol. 1304] *Duly sworn to by Claude R. Porter. Jurat omitted in printing.*

[fol. 1305] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

Civil Action No. 706

THE STATE OF ALABAMA, and PUBLIC SERVICE COMMISSION, Plaintiffs,

v.

THE UNITED STATES OF AMERICA, and INTERSTATE COMMERCE COMMISSION, Defendants

ANSWER OF RAIL LINES, INTERVENING DEFENDANTS—Filed July 12, 1944

Come now, in due season, rail lines operating in the State of Alabama, who are intervening defendants herein, and file this, their joint and several answer to the complaint or petition herein filed by the State of Alabama and Public Service Commission.

I

These intervening defendants hereby adopt the answer herein filed on behalf of Interstate Commerce Commission, a defendant in said cause, as their answer in the same manner and to the same extent as though each paragraph thereof were herein fully set out.

II

Further answering, these defendants specifically deny the averments contained in paragraphs 11, 12, 13, 14, 15 and 16.

[fols. 1306-1307] Wherefore, having answered, these intervening defendants pray that the petition or complaint herein be dismissed.

E. A. Smith, Illinois Central Railroad Co., Chicago, Illinois. W. L. Grubbs, Louisville & Nashville RR. Co., Louisville, Ky. Y. D. Lott, Jr., Gulf, Mobile & Ohio Railroad, Mobile, Ala. F. W. Gwathmey, 1110 Shoreham Bldg., Washington, D. C. Charles Clark, Southern Railway Office Bldg., 15th & K Streets, N. W., Washington 13, D. C.

[fol. 1308] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

Civil Action No. 706

THE STATE OF ALABAMA, and PUBLIC SERVICE COMMISSION

v.

THE UNITED STATES OF AMERICA, and INTERSTATE COMMERCE COMMISSION, Defendants

MOTION FOR LEAVE TO INTERVENE—Filed July 12, 1944

Come now, under and by virtue of Title 28, U. S. C. Section 45a, The Alabama Great Southern Railroad Company, Atlanta, Birmingham and Coast Railroad Company, Atlantic Coast Line Railroad Company, Central of Georgia Railway Company, (M. P. Calloway, Trustee), Gulf, Mobile and Ohio Railroad Company, Illinois Central Railroad Company, Louisville and Nashville Railroad Company, The Nashville, Chattanooga & St. Louis Railway, Seaboard Air Line Railway Company (L. R. Powell, Jr. and Henry W. Anderson, Receivers), Southern Railway Company, St. Louis-San Francisco Railway Company, (J. M. Kurn and John G. Lonsdale, Trustees), and The Western Railway of Alabama, and move the court for leave to appear and intervene in the above-stated case and to become parties defendant thereto in order to protect their rights involved in said case.

[fol. 1309] Each of said movants is and for some years has been a corporation, or receivers of a corporation, en-

gaged in operating a railroad within the State of Alabama, and by its own rails or in connection with the rails of some one or more of the other movants engaged in operating a line of railroad betwen points within the State of Alabama and points in other states within Southern territory; Southern territory is familiarly described and known as embracing those states lying south of the Ohio and Potomac Rivers and east of the Mississippi River;

And as such corporations, or receivers thereof, each of said movants has operated and is now operating as a common carrier of passengers by railroad intrastate within the State of Alabama and interstate within Southern territory; and as such has been and is subject to the provisions of the Act of Congress known as the Interstate Commerce Act;

And said movants, jointly and severally, are vitally interested in the subject matter of this complaint. They are the common carriers by railroad operating within the State of Alabama upon whose petition the Interstate Commerce Commission instituted the investigation docketed No. 28963 in which the report of March 25, 1944, and the orders of May 8, 1944, set out as exhibits A, D, E, and F to the complaint herein, respectively, were made and issued.

[fol. 1310] And each of said movants desires to here appear and intervene on behalf of defendants, United States of America and Interstate Commerce Commission, and to answer the bill of complaint and participate in the trial thereof as a party defendant.

E. A. Smith, Illinois Central System, 135 East 11th Place, Chicago 5, Ill; W. L. Grubbs, Louisville & Nashville R. R. Co., Louisville 1, Ky.; Y. D. Lott, Jr., Gulf, Mobile & Ohio R. R. Co., Mobile 5, Ala.; F. W. Gwathmey, 1110 Shoreham Bldg., Washington 5, D. C.; Charles Clark, Southern Railway Office Bldg., 15th & K Streets, N. W., Washington 13, D. C., Attorneys for Movants.

[fols. 1311-1312] ORDER

The foregoing motion read and considered; let the same be filed; and it is further ordered that the motion be allowed and that the movants, and each of them, be and they

are hereby made parties defendant in the above-entitled cause.

Shackelford Miller, Jr., United States District Judge.

This 12th day of July, 1944.

[fol. 1313] IN UNITED STATES DISTRICT COURT

No. 706

THE STATE OF ALABAMA and PUBLIC SERVICE COMMISSION, Plaintiff,

vs.

THE UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, Defendant

No. 707

THE STATE OF TENNESSEE, et al., Plaintiff,

vs.

UNITED STATES and THE INTERSTATE COMMERCE COMMISSION, Defendant

No. 708

COMMONWEALTH OF KENTUCKY and RAILROAD COMMISSION OF KENTUCKY, Plaintiff,

vs.

UNITED STATES OF AMERICA, Defendant

Consolidated

ORDER ON MOTION TO DISMISS COMPLAINT OF FRED M. VINSON

The motion of the Railroad Intervening Defendants to strike the complaint of Vinson, Director, having duly come on this day for hearing; and attorneys for the interested parties having been heard; and the same duly considered by the Court;

It is ordered that the first paragraph of the prayer, numbered "First", of said Director Vinson's complaint,

and the paragraph numbered "Seventeen" of said complaint and the affidavit of one Whitnack, together with the tables and graph thereto attached; Be and the same are stricken from said complaint—

It is further ordered, that except as herein sustained said motion Be and the same is hereby overruled.

Elwood Hamilton, U. S. Circuit Judge; Shackelford Miller, Jr., U. S. District Judge; Mac Swinford, U. S. District Judge.

In Open Court This 17th day of July 1944.

[fol. 1314] In United States District Court

No. 706

The State of Alabama and Public Service Commission

vs.

United States of America and Interstate Commerce Commission

No. 707

The State of Tennessee et al.

vs.

United States and the Interstate Commerce Commission

No. 708

Commonwealth of Kentucky and Railroad Commission of Kentucky

vs.

United States of America

Order of Submission

The above three cases were called for hearing on July 17th, 1944, before a three Judge court, as follows: Judge Elwood Hamilton, U. S. Circuit Judge for the Sixth Circuit; Judge Shackelford Miller, Jr., District Judge of the United States District Court for the Western District of Kentucky; Judge Mac Swinford, United States District Judge for the Eastern and Western Districts of Kentucky.

The cases were, by agreement, consolidated for hearing and were then heard together. The following counsel appeared:

Eldon S. Dummit, Atty. Gen. of Ky.; M. B. Holifield, Ass't Atty. Gen.; Jack E. Fisher—Frank L. McCarthy for Railroad Commission of Ky.; J. E. Marks, attorney for intervenors, plaintiff; Leon Jourolmon, Jr., for State of Tennessee; Forman Smith, Assistant Atty. General, for State of Alabama; M. D. Miller, for Economic Stabilization Director and Price Administrator, intervening plaintiff; Allen Crenshaw, for Interstate Commerce Commission; Chas. Clark, Frank W. Gwathmey, W. L. Grubbs, attorneys for railroads, intervening defendants.

The case was argued by counsel for the respective parties. Arguments were not completed and court adjourned at 5 P. M., till 9 A. M., July 18th 1944. On July 18th 1944 court reconvened, arguments were resumed, briefs were [fol. 1315] filed and the cases submitted.

Elwood Hamilton, Judge, United States Circuit Court of Appeals for the Sixth Circuit; Shackelford Miller, Jr., Judge, United States District Court for the Western District of Kentucky; Mac Swinford, Judge, United States District Court for the Eastern and Western Districts of Kentucky.

July 18th, 1944.

[fol. 1316] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

No. 706 Civil

THE STATE OF ALABAMA, and PUBLIC SERVICE COMMISSION, Plaintiffs,

v.

THE UNITED STATES OF AMERICA, and INTERSTATE COMMERCE COMMISSION, Defendants

MOTION TO DISMISS COMPLAINT OF FRED M. VINSON, DIRECTOR OF THE OFFICE OF ECONOMIC STABILIZATION—Filed July 17, 1944

Come now, in due season, the railroad intervening defendants in the above-stated cause, and file this, their mo-

tion to dismiss the complaint of Fred M. Vinson, Director of the Office of Economic Stabilization, an intervening party plaintiff, upon the following grounds:

I

Said complaint of Director Vinson fails to state a claim upon which relief can be granted in this cause.

II

In the first paragraph of the prayer of the complaint of said Director Vinson, he asks "that the constitutional and judicial matters be tried de novo with respect to the allegations of paragraph 17 hereof."

No intervening party-plaintiff may assert an interest or raise an issue greater or beyond the scope of the interest and issues raised in the original suit. In the proceedings in this cause before this Court the original plaintiffs are not entitled to a trial de novo; said original parties plain-
[fols. 1317-1360] tiff are limited to the evidence and record which was before the Interstate Commerce Commission in the proceeding before it giving rise to the order attacked in the original suit in this Court. Said complaint of Director Vinson undertakes to inject new and additional evidence to that which was before the Interstate Commerce Commission in Dockets 28963 (Alabama), 29000 (Kentucky), and 29037 (Tennessee); and seeks a trial de novo in this Court.

Wherefore, the railroads who are intervening defendants in this cause, move the dismissal of said Director Vinson's complaint, or so much thereof as unduly broadens the interest and issues raised in the original complaint,—that is to say, specifically, strike paragraph numbered 17 and the affidavit of Doris S. Whitnack and its accompanying tables referred to in said paragraph 17, and strike the first paragraph from the prayer of said Director Vinson's complaint numbered "First."

E. A. Smith, I. C. RR. Co., Chicago, Ill. W. L. Grubbs, L. & N. RR. Co., Louisville, Ky. Y. D. Lott, Jr., G. M. & O. RR., Mobile, Ala. F. W. Gwathmey, 1110 Shoreham Bldg., Washington, D. C. Charles Clark, Southern Ry. Office Bldg., 15th & K Sts., N. W., Washington 13, D. C., Attorneys for the Railroad Intervening Defendants.

[fol. 1361] BEFORE THE INTERSTATE COMMERCE COMMISSION

Docket No. 28963

ALABAMA INTRASTATE FARES

Offices of the Alabama Public Service Commission, Montgomery, Alabama, Monday, June 28, 1943

Met, pursuant to notice, at 9:30 a. m.

Before: C. E. Stiles, Trial Examiner

APPEARANCES:

L. L. Oliver, c/o Southern Railway Company, Washington, D. C., appearing for Southern Railway Company, the Alabama Great Southern Railway Company, and Respondents generally.

Chas. P. Reynolds, 1110 Shoreham Building, Washington, D. C., appearing for the Atlantic Coast Line Railroad Company, the Central of Georgia Railway Company, the Nashville, Chattanooga & St. Louis Railway Company, the Seaboard Air Line Railway Company, and the Western Railway of Alabama, Respondents.

William C. Burger, 908 W. Broadway, Louisville, Kentucky, appearing for the Louisville and Nashville Railroad Company.

James B. Gray, 135 East 11th Place, Chicago, Illinois, appearing for the Illinois Central Railroad Company, Respondent.

Y. D. Lott, Jr., 104 St. Francis Street, Mobile, Alabama, appearing for the Gulf, Mobile & Ohio Railroad Com-[fols. 1362-1364] pany, Respondent.

W. H. Amerine, Montgomery, Alabama, appearing for the Seaboard Air Line Railway Company, Respondent.

Hugh White, President, W. C. Harrison, and Gordon Persons, Associate Commissioners, J. G. Bruce, Chief of Transportation Bureau, and Norwood Johnson, Rate Clerk, Montgomery, Alabama, appearing for the Alabama Public Service Commission.

W. R. McDonald, Chairman, and A. J. Young, Rate Expert, and Crawford L. Pilcher, appearing for the Georgia Public Service Commission, Atlanta, Georgia.

J. E. Marks, 145 East High Street, Lexington, Kentucky, and Frank L. McCarthy, Frankfort, Kentucky, appearing for the Kentucky Railroad Commission.

M. D. Miller, Room 4225 Federal Office Building, Washington, D. C., appearing for the Office of Price Administration, and Director of Economic Stabilization.

James E. Burkett, 230 City Hall Building, Montgomery, Alabama, appearing for the Montgomery Chamber of Commerce, et al.

[fol. 1365] PROCEEDINGS

Examiner Stiles: Let us come to order.

The Interstate Commerce Commission has assigned for hearing at this time and place, Docket No. 28963, Alabama Intrastate Fares. When entering your appearance, please state whether or not you have been admitted to practice before the Interstate Commerce Commission.

Who appears for Respondents?

Mr. Oliver: L. L. Oliver, Southern Railway Company, Washington, D. C., for Southern Railway Company, the Alabama Great Southern Railway Company, and Respondents generally.

Mr. Reynolds: C. P. Reynolds, Washington, D. C., for the Atlantic Coast Line Railroad Company, the Central of Georgia Railway Company, the Nashville, Chattanooga & St. Louis Railway, the Seaboard Air Line Railway, and the Western Railway of Alabama, Respondents.

Mr. Gray: James B. Gray, 135 East 11th Place, Chicago 5, Illinois, for the Illinois Central Railroad Company. I am a registered practitioner.

Mr. Oliver: I should have stated that I am a registered practitioner.

Mr. Lott: Y. B. Lott, Jr., 104 St. Francis Street, Mobile, Alabama, appearing for the Gulf, Mobile & Ohio Railroad Company. I am a registered practitioner.

Mr. Oliver: Mr. Examiner, I have a letter from Mr. Wil-
[fol. 1366] liam C. Burger, Attorney for the Louisville & Nashville Railroad Company, asking me to enter his appearance, that he is on his way here, and he would be here

on time, unless his train happened to be late. So he will be in a little later and will enter his own appearance, but I am appearing at his request.

Mr. Pilcher: Mr. Crawford Pilcher, representing the Georgia Public Service Commission. Mr. Young here is rate expert for the Georgia Public Service Commission. We are not parties, but we are appearing as parties at interest. My application is pending with the Commission for a certificate to practice.

Examiner Stiles: You have filed an intervention?

Mr. Pilcher: No, sir.

Mr. Marks: The Kentucky Commission is interested here as an observer. If we could intervene, we would like to do so, Mr. Frank L. McCarthy, Chairman, and J. E. Marks, Commerce Counsel.

Examiner Stiles: Do you have the petition of intervention?

Mr. Marks: No, it has not been prepared. At the time I started we thought we would not enter an appearance.

Examiner Stiles: In this type of proceeding, the proper manner of intervention is by a petition.

Mr. Marks: I would like to have the privilege of filing that within ten days if that could be done.

Examiner Stiles: Can you not file it sometime during the [fol. 1367] course of the hearing?

Mr. Marks: I will try to.

Examiner Stiles: Please.

Mr. Pilcher: We would like to reserve the same right. The Chairman of our Commission, Mr. McDonald, I failed to state is here for the Georgia Public Service Commission.

Examiner Stiles: If possible, file your petition during the course of the proceeding, and then we can pass on it on the record.

Are there any appearances in support of the carrier-respondents?

Off the record.

(Discussion had off the record.)

Mr. White: Mr. Examiner, at this time, with your permission, I will enter appearances for the Alabama Public Service Commission. Hugh White, President, W. C. Harrison, Associate Commissioner, Gordon Persons, Associate Commissioner, and J. G. Bruce, Chief of the Transportation

Bureau. Mr. Bruce will conduct most of the examination on behalf of the Alabama Commission, but probably the Commissioners will also want to ask some questions, particularly on cross-examination of the Petitioner's witnesse.

Examiner Stiles: This, I take it, will be in opposition to the petition?

Mr. White: Of the carriers.

[fol. 1368] Examiner Stiles: Yes.

Mr. White: Yes, that is correct.

Examiner Stiles: Are there any other appearances in opposition?

Mr. Miller: I would like to enter the appearance of M. D. Miller, appearing on behalf of the Price Administrator, and the Director of Economic Stabilization. My address is 4225, Federal Office Building, No. 1, Washington, D. C.

I am not admitted to practice before the Commission, but the Commission does not consider that necessary. I have here a petition for intervention, the original of which is with the Examiner. If any other parties would care to have a copy, I would be glad to give it to them.

Examiner Stiles: This petition of the Office of Price Administration is granted. This is an investigation instituted by the Interstate Commerce Commission upon a petition by the rail carriers operating in Alabama, to determine whether the refusal of the Alabama Public Service Commission to authorize or permit the application to the transportation of passengers traveling intrastate in Alabama, of fares and charges corresponding to those established for interstate application on October 1, 1942, causes any undue or unreasonable advantage, preference or prejudice as between persons or localities in intrastate commerce on the one hand and interstate or foreign commerce on the other hand; [fol. 1369] or any undue, unreasonable or unjust discrimination against interstate or foreign commerce; and to determine what fares and charges, if any, or what maximum or minimum or maximum and minimum fares and charges shall be prescribed to remove such advantage, preference, prejudice or discrimination, if any, as may be found to exist.

The carriers may call their witness.

Mr. Oliver: Will you come around, Mr. Aiken? Off the record, Mr. Examiner.

Examiner Stiles: Suspend the record.

(Discussion had off the record.)

E. N. AIKEN was sworn and testified as follows:

Direct examination.

By Mr. Oliver:

Q. Please give your name and state your residence.

A. E. N. Aiken, Atlanta, Georgia, Assistant Passenger Traffic Manager, Southern Railway System Lines.

Q. State how long you have held your present position and, very briefly, your previous experience in passenger traffic matters.

Mr. Bruce: We will waive that and admit his qualifications.

Mr. Oliver: I think you might state for the record, Mr. Aiken, your experience.

The Witness: I have been Assistant Passenger Traffic Manager since April 15, 1931. My service with the Passen- [fol. 1370] ger Traffic Department, Southern Railway System Lines, dates from August 1, 1902; prior to that date I was in the service of the Passenger Traffic Department of New York Central Lines for several years with headquarters at New York. All of my railroad career has been spent in the Passenger Traffic Departments of the railroads named.

Q. On whose behalf are you testifying in this proceeding?

A. Southern Railway Company was designated to act as Chairman of the Railroad Committee in presenting this case and I am speaking for all of the railroads operating within the State of Alabama to which the Alabama Public Service Commission has denied authority to put their intrastate passenger fares on the interstate basis in accordance with passenger tariffs filed with it to become effective December 1, 1942.

Q. Before proceeding with your testimony I think it would be well to place before the Examiner a map showing the railroad lines in Alabama. You have, I believe, such a map which you wish to offer as an Exhibit.

A. Yes.

Q. Will you identify the map, please, and state in what year it was published?

A. I file as Exhibit No. 1, a map prepared in 1943 by Office of Chief Engineer, Southern Railway System Lines, showing this information.

Examiner Stiles: Let this be identified as Exhibit No. 1. [fol. 1371] (Exhibit No. 1, witness Aiken, marked for identification.)

By Mr. Oliver:

Q. Please give in chronological order a brief statement of the one-way interstate and intrastate basic passenger fares applicable in Southern Passenger Association Territory from April 1, 1908, to date.

A. Generally speaking, the authorized bases of one-way passenger fares in Southern Passenger Association territory, i. e., territory south of the Potomac and Ohio and east of the Mississippi Rivers, including the gateways, for this period were as follows:

From April 1, 1908, to June 9, 1918, inclusive, 2.5 cents per mile, in all classes of equipment.

From June 10, 1918, to August 25, 1920, inclusive, under order of the Director General of Railroads, 3 cents per mile, in all classes of equipment. For the period June 10, 1918, to November 30, 1918, an additional charge of 16⅔ per cent of the one-way fare was assessed for travel in sleeping and parlor cars.

From August 26, 1920, to November 30, 1933, inclusive, 3.6 cents per mile, in all classes of equipment, plus a surcharge for passengers traveling in sleeping or parlor cars of 50 per cent of the charge for space occupied in such cars.

I might divert here a little and point out parenthetically that during the years 1932 and 1933 certain of the southern carriers decided as an experimental proposition to estab- [fol. 1372] lish lower fares in an attempt to attract additional travel to the railroads in competition with other forms of transportation, particularly with the private automobile and buses.

For example, from April 1, 1933, to November 30, 1933, inclusive, the Atlanta and West Point Railroad-Western Railway of Alabama, Mobile and Ohio Railroad (now Gulf, Mobile and Ohio Railroad), Louisville and Nashville Railroad and Nashville, Chattanooga nad St. Louis Railway had in effect experimental one-way fares on basis of 3 cents per mile in sleeping or parlor cars without surcharge and 2 cents per mile in coaches. During this same period the Southern Railway System Lines were experimenting be-

tween various points on their lines with a fare of 1.5 cents per mile, good for transportation in coaches only.

Continuing now with the chronological history:

From December 1, 1933, to November 14, 1937, inclusive, 3 cents per mile in sleeping or parlor cars and 1.5 cents per mile in coaches, except that the coach fare on certain roads such as the Illinois Central System, Mobile and Ohio Railroad (now Gulf, Mobile and Ohio Railroad) and St. Louis-San Francisco Railway was kept at 2 cents per mile, these latter roads meeting the 1.5 cents per mile competition between certain points.

From November 15, 1937, to January 14, 1939, inclusive, 3 cents per mile in sleeping or parlor cars and 2 cents per [fol. 1373] mile in coaches.

From January 15, 1939, to February 9, 1942, inclusive, 3 cents per mile in sleeping or parlor cars and 1.5 cents per mile in coaches, except on certain lines such as the Gulf, Mobile and Ohio Railroad, Illinois Central System, St. Louis-San Francisco Railway coach fare was 2 cents per mile, competition being met between certain points.

From February 10, 1942, to September 30, 1942, 3.3 cents per mile in sleeping or parlor cars and 1.65 cents per mile in coaches, except on lines of the Gulf, Mobile and Ohio Railroad, Illinois Central System, and St. Louis-San Francisco Railway fare was 2.2 cents per mile, meeting competition between certain points.

A comparison of the authorized basic coach fares in effect for the several periods mentioned with the coach fare being sought in these proceedings, i. e., 2.2 cents per mile, which is the same coach fare currently in effect for interstate traffic, shows:

For the period April 1, 1908, to June 9, 1918, the fares were approximately 13½ per cent higher.

For the period June 10, 1918, to August 25, 1920, the fares were approximately 36 per cent higher.

For the period August 26, 1920, to November 30, 1933, the fares were approximately 63½ per cent higher.

Q. When and under what circumstances was the 2.2 cent [fol. 1374] coach fare made applicable for interstate transportation generally throughout the south?

A. On July 14, 1942, substantially all railroads operating in Southern Passenger Association Territory (except

those roads which were maintaining at the time a coach fare of 2.2 cents per mile) filed a petition with the Interstate Commerce Commission for authority to place their one-way coach fares on the same basis as in effect generally throughout the United States. When this petition was filed the great majority of the southern roads had in effect a coach fare on the basis of 1.65 cents per mile. However, certain roads, for example, the Gulf, Mobile and Ohio Railroad, Illinois Central System and St. Louis-San Francisco Railway had in effect at that time coach fares on basis of 2.2 cents per mile, this being the same basis generally in effect throughout the rest of the United States.

The authority sought was granted by the Interstate Commerce Commission in its order dated August 1, 1942, modifying the original order in Ex Parte 148, Increased Railway Rates, Fares and Charges, 1942, 248 I. C. C. 545, and the basis of coach fares authorized thereunder, i. e., 2.2 cents per mile for interstate traffic, was made effective on October 1, 1942.

Q. When the petition to which you refer was filed with the Interstate Commerce Commission, was there any protest filed with the Commission in connection with the proposed increase?

[fol. 1375] A. No. However, after the Interstate Commerce Commission had entered its order of August 1, 1942, approving the increase and after tariffs had been filed as authorized by the Interstate Commerce Commission, Mr. Leon Henderson, then Price Administrator, filed a written protest and request for suspension. The Interstate Commerce Commission refused to suspend the tariffs and they became effective interstate, as previously stated, on October 1, 1942.

Q. What one-way coach fare is now being charged by the Alabama railroads for intrastate transportation in Alabama?

A. The basis of one-way coach fares generally maintained by the Alabama carriers is 1.65 cents per mile. However, certain of the Alabama carriers, i. e., Gulf, Mobile and Ohio Railroad, Illinois Central System, and St. Louis-San Francisco Railway, now have in effect a coach fare of 2.2 cents per mile except in such instances where they meet competition of the lines maintaining 1.65 cents per mile fare.

Q. Mr. Aiken, is the fare of 1.65 cents per mile, to which you have just referred as being maintained by certain railroads in Alabama, maintained as a result of the order of the Alabama Public Service Commission?

A. Yes, it is right now.

Q. Subsequent to the establishment of the interstate coach fare of 2.2 cents per mile to and from points in Alabama, did the Alabama lines undertake to establish the [fol. 1376] same basis of fares intrastate in Alabama?

A. Yes.

Q. Explain what steps were taken and the results of the efforts of the Alabama lines in this direction.

A. As previously shown, tariffs and supplements reflecting the establishment of 2.2 cents per mile were filed with the Alabama Public Service Commission to become effective December 1, 1942. These tariffs were suspended until January 30, 1943, by order of the Alabama Public Service Commission dated November 5, 1942, in Docket No. 8618, which order provided that the matter be assigned for hearing before that body at Montgomery, Alabama, on November 24, 1942. The hearing was duly held on that date and decision of the Commission was rendered January 15, 1943, denying the proposal of the carriers to make the fares proposed effective in the State of Alabama.

Q. Have the railroads in the south, including the Alabama lines sought within recent months to put their intrastate passenger fares in other States on the interstate basis?

A. Yes.

Q. State what action has been taken by the various State Commissions in the proceedings involving the proposed increases in passenger fares.

A. Petitions were filed with the Commissions in those States, the laws of which require that the authority of the State Commission be first obtained. In other States, in [fol. 1377] which no such requirement exists, tariffs designed to make effective the coach fare of 2.2 cents per mile were duly filed with the State Commissions.

The State Commissions of Florida, Louisiana, Mississippi, South Carolina and Virginia have already approved the proposed fares. The Railroad Commission of Kentucky denied the increase in coach fares, but permitted the Kentucky lines to put into effect the round-trip fares good for transportation in sleeping or parlor cars. Hearings

have been held in the States of Georgia, North Carolina and Tennessee but the decisions of the regulatory bodies of those States have not as yet been released.

Mr. Oliver: I might state at this point, Mr. Examiner, that Thirteenth Section petition has now been filed with respect to the fares in the State of Kentucky, to which Mr. Aiken has just made reference. That was filed on June 25.

By Mr. Oliver:

Q. Do all of the Alabama lines maintain a one-way coach fare of 2.2 cents per mile for interstate transportation to and from points in Alabama?

A. Yes.

Q. Is this fare of 2.2 cents per mile now in effect for interstate transportation throughout the south and generally throughout the remainder of the United States?

A. Yes, with the possibility of a few exceptions on lines operating west of the Mississippi River.

[fol. 1378] Q. Please explain how it happened that prior to October 1, 1942, some, but not all, of the Southern railroads had in effect a coach fare of only 1.65 cents per mile, whereas, the fare generally applicable in other parts of the country was 2.2 cents per mile.

A. In Docket 26550, Passenger Fares and Surcharges, decided February 28, 1936, and reported in 214 I. C. C. 174, the Interstate Commerce Commission, after conducting an extended investigation, found that passenger fares of 2 cents per mile for transportation in coaches and 3 cents per mile for transportation in sleeping or parlor cars throughout the United States would be reasonable. In the same case the Commission referred to what it described as the "experimental coach fare" of 1.5 cents then being maintained by certain railroads in the Southeast and, although approving the reasonableness of a coach fare of 2 cents per mile, held that the reduced coach fare of 1.5 cents was not "unlawful"

As previously indicated, effective November 15, 1937, the Southeastern roads increased their basic one-way fare from 1.5 cents per mile to 2 cents per mile. Subsequently, certain of the Southeastern carriers, not including, however, the Illinois Central System, Gulf, Mobile and Ohio Railroad and the St. Louis-San Francisco Railway, and possibly some of the smaller roads, concluded it would be

to their advantage to restore the former one-way coach fare of 1.5 cents per mile. This was done effective Janu-
[fol. 1379] ary 15, 1939.

By its order of January 21, 1942, in Ex Parte No. 148, the Interstate Commerce Commission, upon petition of the railroads operating throughout the United States, approved a uniform increase of ten per cent in all passenger fares with certain provisions as to the disposition of fractions. Accordingly, passenger fares throughout the United States were increased ten per cent effective February 10, 1942. The general basis of coach fares, i. e., 1.5 cents per mile, applicable in the Southeast, with the exceptions heretofore mentioned, automatically became 1.65 cents per mile.

On the other hand, the former fare of 2 cents per mile which was being maintained by the railroads in all other parts of the country, including some of the railroads in the Southeast, became 2.2 cents per mile. This ten per cent increase was also approved by the Alabama Commission for intrastate travel on lines then maintaining a 2 cent per mile basis as well as lines maintaining a basic fare of 1.5 cents per mile.

Q. Do the passenger trains operated in the State of Alabama carry both interstate and intrastate passengers?

A. Yes.

Q. Do interstate and intrastate passengers frequently ride on the same trains and in the same coaches?

A. Yes.

Q. Do you, as an experienced railroad passenger traf-
[fol. 1380] fic officer, know of any reason which would justify the maintenance of a fare of only 1.65 cents per mile in intrastate coach transportation within the State of Alabama, when an interstate passenger traveling to or from points within the State is required to pay 2.2 cents per mile?

A. No.

Q. With the present differences between intrastate and interstate fares, is it possible for a pasenger to defeat interstate fares to and from points in Alabama by buying an intrastate ticket for a part of a trip?

A. Yes.

Mr. Bruce: Mr. Examiner, at this time I wish to enter an objection. It is not possible to defeat an interstate fare

with a combination of an interstate fare and an intrastate fare. Such fares would be unlawful, and I have a reference to the Supreme Court decision which states that such fares would be unlawful.

I also have a number of cases, a great number of cases in which the Commission has held that, that is along substantially the same lines that the Court has held.

And incidentally, in running down the decisions of the United States Supreme Court, I find Shepherd states that this decision has not been amended in any way, or in any way changed by the Court itself. The Commission can not change the finding of the Court.

[fol. 1381] Incidentally, in explaining this, the Act covers the fares, charges, and rates, and the case that I have in mind which names a number of citations, in which the Court has ruled, and in which the Commission has carried out the mandate of the Court, passenger fares are not involved, due to the fact a savings on a combination of intrastate fares and interstate fares would be unlawful. Therefore, it has never been tested by the Court.

But the fact remains that it was tested in the Court in regards to freight movement, and the Court is very explanatory in its decision, and reversed the two lower Courts, if you please, the United States District Court and the Court of Appeals.

Therefore I maintain that a fare which embraces a combination of an interstate fare to a border point and an intrastate fare within the State is an unlawful fare, and that the carriers cannot sell a ticket of that sort, its agent cannot sell a ticket of that sort. Neither can the conductor on the train, if he has knowledge, sell a cash fare slip of that sort. And if he did, or if the employee at the station did, the application of the rate would be unlawful, and the agent of the carrier would be conniving to defeat interstate fares.

Mr. Oliver: Mr. Examiner, we, of course, have no disposition to quarrel with the statement that such fares would be unlawful, and that the person that indulged in it is vio-
[fol. 1382] lating the law, and that the agent of the railroad would be violating the law if he participated in a transaction of that sort.

But we do say that the potentiality is there, and that it is being indulged in to the best of our knowledge, information, and belief, and I think the evidence is entirely pertinent.

Mr. White: I would like to make this statement, if I may, Mr. Examiner. The prohibition of the Interstate Commerce Act against undue prejudice and undue preference in a case of this sort is directed to what is actual, and not what is possible. And this question simply asks if it is possible for a passenger to defeat interstate fares, to and from points in Alabama, by an intrastate ticket for part of the trip, and we object to the question on this ground, what the petitioners must show is something that is actual, an actual prejudice, not just a mere possibility of prejudice, or a mere possibility of preference.

Mr. Bruce: Mr. Examiner, the theory that Counsel is advancing here through his witness is substantially the same as that a man could commit burglary. Everybody knows that a man could commit burglary, but burglary is unlawful, and this class of a rate would be unlawful.

Examiner Stiles: The carriers are not contending as I understand it that such a combination of rates would be lawful for an interstate journey.

[fol. 1383] Mr. Oliver: We do not, no, sir, On the contrary, we say it would be unlawful.

Examiner Stiles: But you are showing the fact that if a passenger gets off the train and terminates his interstate journey and starts a new intrastate journey, it would be possible for him to travel at such charges which would be less than had he continued through as an interstate passenger. Is that correct?

Mr. Oliver: That is correct.

Mr. White: May I suggest this, Mr. Examiner, in one of the Georgia intrastate Section Thirteen cases, in the case of passenger fares too, the Commission ruled that a mere showing that some Act might be possible that would be unduly prejudicial or unduly preferential was not sufficient under the statute to establish the fact of preference or prejudice.

Mr. Bruce: We make reference to that case at the present time, and Mr. Examiner, we will give you the citations.

We have reproduced to some extent that decision.

Examiner Stiles: In the Examiner's judgment the objection goes more to the weight of the evidence than to its admissibility, and the objection is overruled.

By Mr. Oliver:

Q. Will you proceed with your testimony, Mr. Aiken? Have you prepared an Exhibit which illustrates this situation?

A. Yes.

[fol. 1384] Mr. Bruce: I want to object to the Exhibit, again, Mr. Examiner. It is all right for Counsel to state that it can be done in theory, but in practice it cannot be done, and I object to the Exhibit that will show an example.

Examiner Stiles: The objection is overruled.

By Mr. Oliver:

Q. Proceed, Mr. Aiken.

A. Yes. As one illustration, the published interstate one-way coach fare from Birmingham, Alabama, to Chattanooga, Tennessee, (on basis of 2.2 cents per mile) is $3.19. It is possible to purchase a one-way coach ticket from Birmingham, Alabama, to Valley Head, Alabama, at the intrastate rate of $1.70, constructed on basis of 1.65 cents per mile, and rebuy, or pay cash fare on the train, from Valley Head, Alabama, to Chattanooga, Tennessee, at interstate fare of 92 cents (2.2 cents per mile) or total expenditure of $2.62, thereby defeating the through published interstate rate by 57 cents.

I file Exhibit No. 2 giving a number of illustrations or examples of possible reductions in charges for interstate trips on tickets good for transportation in coaches only by purchasing to the point nearest the State line at which trains are regularly scheduled to stop and rebuying therefrom to interstate destinations. These examples, or illustrations, can be multiplied indefinitely.

Examiner Stiles: This will be identified as Exhibit No. 2.

(Exhibit No. 2, witness Aiken, marked for identification.)

[fol. 1385] Examiner Stiles: Your objection goes to this as well. That is understood.

Mr. Bruce: May I ask Counsel a question at this time?

Examiner Stiles: I beg your pardon.

Mr. Bruce: May I ask Counsel a question at this time?

Examiner Stiles: Yes.

Mr. Bruce: Do you state that these examples are built up on a lawful rate, on a lawful application of the rate?

Mr. Oliver: I stated very distinctly, Mr. Bruce, that we do not state that that would be a lawful arrangement.

Mr. Bruce: And it would be contrary to law, you admit that?

Mr. Oliver: Yes, I do.

Mr. Bruce: That is all.

By Mr. Oliver:

Q. Now, Mr. Aiken, do passengers actually defeat the interstate fares in the manner you have indicated?

A. While it will be appreciated this is a difficult and almost impossible matter to prove, it is common knowledge advantage has been taken by interstate passengers buying tickets at the lower intrastate fare to some points and re-buying from such points, or paying cash fares on trains to destinations. The condition which permits of this does exist but if is difficult to police.

Mr. Bruce: I object to the answer, due to the fact he has stated no person, no name, what he has stated is merely [fol. 1386] conjecture, and it is not admissible.

Unless Counsel is prepared to have his witness state the names of the people and the occasions on which this occurred, and the date, the question and the answer become one of hearsay, a matter of hearsay, and I object.

Examiner Stiles: The objection goes to the weight of the evidence and is overruled.

By Mr. Oliver:

Q. Now, Mr. Aiken, have you had instances where your own agents have asked for instructions as to whether or not they could sell split tickets, and things of that sort in connection with these intrastate fares?

A. Yes, Mr. Oliver, I have had a number of them. As an illustration, during the period that the Florida fares were lowered, interstate fares—I mean intrastate fares, agents in Cincinnati would telephone me personally and ask if they could issue a ticket to Jacksonville, Florida, at the interstate fare, so that the passenger could use the through service where he had to change cars any way, during the winter season, and if he could issue another ticket going to Miami at the coach fare, and we have told him definitely and positively that could not be done.

The same thing has been true in Atlanta and at other points on our railroad.

Mr. Bruce: The same objection.

By Mr. Oliver:

Q. Finish your answer.

[fol. 1387] A. But so far as the individual names of the parties are concerned, of course, I didn't have anything in that respect.

Mr. White: The Alabama Commission objects to that sort of testimony here as having any probative value for these other and further reasons: It is the right of a passenger who wants to take passage from Cincinnati to Jacksonville, Florida, to ride on an interstate ticket, and if he breaks his journey there and attends to business in Jacksonville, he has got a legal right to then buy an intrastate ticket from Jacksonville, Florida, to Miami, or to some other point.

There is nothing in this testimony to show that the passenger could not legally do that, and would not have a legal right to do it.

Mr. Oliver: I might point out, Mr. Examiner, that the witness testified that apparently these—or my interpretation of his testimony is that these inquiries were made by his agents, and were inspired by requests for tickets of that sort by passengers. Is that correct?

The Witness: Yes.

Mr. White: I would like to ask Counsel how he knows this witness can testify as to what inspired the passenger to do something in Cincinnati.

Mr. Oliver: I didn't say that, Mr. White, I said as I understood it the inquiries were inspired by inquiries by passengers. Is that correct?

[fol. 1388] The Witness: Yes, sir. You see, what actually happens is this, here is a passenger in Cincinnati that wants to go to Miami, Florida, and he has got a trunk, and he wants to check it through. If he bought a split ticket, as we call it, from Cincinnati to Jacksonville and had the other ticket, regardless of its class, he could check his baggage through, and therefore he would defeat the first class fare from Cincinnati to Miami, Florida.

Examiner Stiles: He would get through interstate checking service.

The Witness: That is right.

Examiner Stiles: On a journey, part of which was intrastate?

The Witness: Yes, sir.

Examiner Stiles: According to the ticket that he bought?

The Witness: That is right.

Mr. Bruce: I am going to ask Counsel if his agents are soliciting that kind of a ticket, that is they are attempting to sell a ticket on a split fare proposition.

Mr. Oliver: You heard the testimony of the witness that he had positively instructed his agents not to sell that kind of transportation.

Mr. Bruce: What prompted the inquiry then?

The Witness: May I answer?

Mr. Oliver: I wish you would, Mr. Aiken please, sir.

[fol. 1389] The Witness: Like all other businesses that today have a lot of new manpower, they don't understand all of the intricate things of the business, and they try to give the passenger the benefit of the lowest possible combinations they can make. That has been without knowing that they are violating an interstate fare, and the minute that they bring it to our attention, of course we tell them no.

Examiner Stiles: I believe there is an objection on the record. The objection is overruled.

By Mr. Oliver:

Q. You have prepared an Exhibit illustrating that the present lower coach fares in Alabama result in discrimination against interstate commerce. Please offer your Exhibit and explain it.

A. Yes.

Examiner Stiles: Let this one page Exhibit which is being distributed be identified as Exhibit No. 3.

(Exhibit No. 3, witness Aiken, marked for identification.)

By Mr. Oliver:

Q. Proceed.

A. I file Exhibit No. 3, showing this information. As an example of this, the interstate fare on basis of 2.2 cents per mile from Tuscaloosa, Alabama, to Laurel, Mississippi, a distance of 154 miles, is $3.44; whereas, the intrastate fare on basis of 1.65 cents per mile from Tuscaloosa, Ala-

bama, to Valley Head, Alabama, a distance of 159 miles, [fol. 1390] or four miles greater, is but $2.65, a difference of 75 cents. The examples shown in the Exhibit are only illustrative and could be multiplied indefinitely.

Mr. Bruce: The same objection.
Examiner Stiles: The same ruling.

By Mr. Oliver:

Q. Did the Interstate Commerce Commission have before it in the original and reopened proceeding in Ex Parte 148 a full and complete record of the facts concerning revenues, expenses, operating conditions, financial conditions, etc., of the southern railroads, including the Alabama lines, as well as of railroads operating in other parts of the country.

Mr. White: We object to that because that is just calling for a mere opinion or conclusion of this witness.
Mr. Oliver: I am entirely willing to let the record speak for itself in that respect.
Mr. White: All right.
Examiner Stiles: The question is withdrawn as I understand it.
Mr. Oliver: That is right.

By Mr. Oliver:

Q. In the report and order of the Interstate Commerce Commission on the further hearing in Ex Parte 148 decided April 6, was there any modification made in any way in its previous findings in connection with the present interstate standard passenger fares?
[fol. 1391] Mr. White: The same objection to that question.
Mr. Oliver: I think that is entirely proper.
Mr. White: The witness is being asked by Counsel to pass on the question as to whether the decision in Ex Parte 148 was a modification of previous findings of the Commission, and that calls for his judgment, or a comparison of the decision in Ex Parte 148; and I assume the decision in ICC 26550, or previous decisions which were made several years before, when conditions were very different.
Examiner Stiles: The decision, of course, will speak for itself. What this witness might say would have no weight. If he wishes to state his understanding of what the Com-

mission,—or whether or not there was a modification, as a basis for something further that he is going to testify to, he may state his understanding of it. Of course, the Commission is not governed by that.

By Mr. Oliver:

Q. Mr. Aiken, has there been any change in the interstate coach fares since the decision of the Interstate Commerce Commission in the reopened proceeding in Docket Ex Parte 148?

A. No, not any.

Q. Now, Mr. Aiken, was there any change in the interstate fare which was established as a result of the original proceeding in Docket Ex Parte 148 by virtue of the decision in the reopened case?

[fol. 1392] A. No, they remained at 2.2 cents per mile.

Mr. White: That is objectionable for the same reason, a comparison of the decisions is not permissible. The decisions themselves are the best evidence.

Mr. Oliver: You don't question the fact, Mr. White, do you, by any chance, that there has been no change as a result of the decision in the reopened 148 proceeding?

Mr. White: I am not prepared to say. I have not studied the decisions to see as to that feature.

Examiner Stiles: Is the witness testifying from his knowledge of the fares themselves?

Mr. Oliver: Yes, of course he is.

Examiner Stiles: He may testify to that fact.

Mr. White: That is a fact, of course.

By Mr. Oliver:

Q. And as I understand it there was no change in the interstate fare as a result of the reopened proceeding in Ex Parte 148?

A. No, sir, not on the interstate fare.

Mr. White: As I understand it, Counsel for the petitioners is not contending here that Ex Parte 148 was an investigation into the reasonableness of the rates involved in that case.

Mr. Oliver: I think that is a fair conclusion, that they did consider the reasonableness of the 2.2 cents fare, which was under attack by the OPA in the reopened proceeding.

Mr. White: Was there any testimony offered in that case? When OPA petitioned for that matter to be reopened, [fol. 1393] and they be allowed to offer testimony, was there any testimony given?

Mr. Oliver: Very voluminous testimony, Mr. White. I believe you were there.

Mr. White: I am not talking about the first 10 per cent increase, I am talking about when you filed your tariffs there to make the increase from 1.65 to 2.2 cents per mile. There was no evidence offered under that proceeding, was there?

Mr. Oliver: Mr. Examiner, I don't want to prolong this, but I would like to point out to Mr. White that Mr. Gilbert spent, I don't know, possibly two days on the stand, and put in very voluminous Exhibits, and that Dr. Parmelee for the railroads put in the record a rather volumious amount of testimony.

Mr. White: I do recall that, on the reopened proceeding.

Mr. Oliver: The record will speak for itself on that.

Mr. White: On the reopened proceeding?

Mr. Oliver: Yes, that is true.

Mr. White: Yes, that is correct.

By Mr. Oliver:

Q. Are the railroads, including the Alabama lines, encountering any particular difficulties or incurring any unusual expenses in connection with passenger train operations under present conditions?

A. Yes, they are. The handling of military movements necessarily entails substantial added costs. Equipment must be assembled at point of origin and this, in many instances, necessitates dead-heading equipment long dis- [fol. 1394] tances. In addition, after the movement has been completed the equipment must in many cases be returned from destination point.

Mr. Bruce: It appears that the Counsel and witness are attempting to make a case. Is the military movement rate going to be increased?

Mr. Oliver: I beg your pardon?

Mr. Bruce: Are the military movement rates and fares going to be increased?

Mr. Oliver: Absolutely.

Mr. Bruce: They are pratically altogether on a land grant rate.

Mr. Oliver: We will go into that, we will show the extent that the land grant enters into the situation. But military fares as such were involved in the proceeding before the Alabama Commission, and the military fares were increased under the order of the Interstate Commerce Commission as to interstate commerce, and we are asking of the Interstate Commerce Commission permission to put the intrastate fares in Alabama on exactly the same basis as the interstate fares.

Mr. Bruce: Do you have an intention of making a showing of your witness by segregating such military expenses away from civilian expenses of passenger movements?

Mr. Oliver: We do not.

By Mr. Oliver.

Q. Will you proceed with your answer please sir?

[fol. 1395] A. To comply with the Government requirements, it is necessary for a "train escort" to ride troop trains. This, of course, is an added item of expense.

Examiner Stiles: Explain that term, "train escort."

The Witness: Yes, sir. We assign a man who is what you might term a "contact man", with the train commander. He looks after all of the details, to see that the train is kept on schedule, keeps in touch with the operating people, arranges for such supplies as may be required, and feed the men, if and when they don't have sufficient on the train, and does anything that is possible to assist the train commander in getting through.

By Mr. Oliver:

Q. Proceed.

A. In order that proper protection may be accorded, in accordance with the requirements of the Government for military movements, it has been necessary to increase the personnel in general offices in order that such offices may be on duty, in some instances, for 24 hours each day and others from 12 to 16 hours per day. This also is an item of additional expense.

Because of the volume of military, as well as civilian travel, the railroads have been compelled not only to increase their general office forces but also to increase the forces in ticket agencies, another item of expense.

Large sums of money have been spent in the last decade in [fol. 1396] remodeling and air conditioning passenger equipment all in an effort to recapture a portion of the traffic using other modes of transportation, particularly from the highways. While the monies expended for these improvements have provided additional comforts and conveniences to the traveling public at, so far as coach travel is concerned, the lowest charges ever made by the railroads, it has materially increased the cost of service.

Examiner Stiles: Is coach service, as a rule, air conditioned at the present time?

The Witness: Generally speaking, yes sir, on most all railroads, although branch lines don't have it in some instances, and occasionally we have to put in what we call a non-air conditioned car because of the conditions. But, generally speaking, all big trains have air condition equipment on them.

Examiner Stiles: Is that so on the troop trains?

The Witness: No, sir, not always, no, sir. Generally speaking it is not.

Examiner Stiles: Off the record.

(Discussion had off the record.)

Examiner Stiles: Proceed.

Mr. Oliver: Continue your statement.

Mr. Bruce: Generally speaking", will you explain that? Tell me what percentage of your coaches are air conditioned on the Southern Railway, for instance, that you are using at the present time.

[fol. 1397] The Witness: I am getting into that a little bit later on, if you please Mr. Bruce. I will tell you exactly how many we have air conditioned.

Examiner Stiles: Proceed.

By Mr. Oliver:

Q. Will you continue your statement?

A. The Southern Railway System Lines, alone, have air conditioned, or purchased new with air conditioning facilities, 189 coaches. Many coaches have been remodeled to provide additional space for retiring and smoking rooms for both ladies and men, with soap, towels and drinking cups furnished without charge. In making these improvements, the seating capacity of the coaches was reduced

roughly from 15 to 20 per cent, or from 80 and 88 persons to 70 persons; 14 Southern Railway System coaches have been equipped with reclining chairs and in these coaches the seating capacity was reduced almost 50 per cent or from 80 persons to 46 persons. This greatly decreased carrying capacity, correspondingly, lowering the revenue per coach.

Southern Railway System Lines have purchased 6 new streamlined passenger trains with total of 21 coaches, 6 combination baggage coaches, 5 dining cars and 6 buffet coaches; 6 two-car Diesel units and 16 Diesel powered locomotives for passenger train service. Uniformed passenger representatives, whose sole duty is to give helpful service and assistance in making the passengers' trip comfortable and pleasant, accompany these trains. A hostess is also provided for these trains. Her duties are to look [fol. 1398] after the comfort of women and children. In addition, one attendant is assigned to each two coaches.

All of these facilities and services add to the cost of operations. They are available to Alabama intrastate passengers as well as interstate passengers to or from Alabama or passing through Alabama, and the interstate passenger pays for this service on the basis of 2.2 cents per mile, whereas the intrastate passenger pays but 1.65 cents per mile.

Examiner Stiles: In connection with your statement that you have given about these increased services, isn't it a fact that the railroads are now receiving a revenue from the seats in their observation and lounge cars, whereas heretofore they received no revenue?

The Witness: Yes, sir, that is correct.

Examiner Stiles: Continue please.

Mr. White: Isn't it also true that in these cars where you testified that some of the seating capacity has been reduced to provide additional space for smoking rooms, and so on, that now the smoking rooms and the aisles are generally occupied by pasengers not sitting down, but standing up for a great part of their journey, isn't that true?

The Witness: That is correct sir.

Mr. White: In other words, you are going into all these comforts which you have provided, which now have very little meaning, because on practically all of your trains and [fol. 1399] the trains of the other petitioners, not only intrastate in Alabama, but interstate, the passengers, a great

many of them, have to stand up for a good part of their journeys. Isn't that true?

The Witness: That is true to some extent, yes, sir.

Mr. White: All right.

By Mr. Oliver:

Q. You don't state that as a general proposition, do you?

A. No. Whenever it is possible—I was trying to answer Mr. White's question truthfully and honestly. Wherever it is possible and a car is available and that condition exists, a new car is put in to relieve it. But the great volume of military traffic sometimes is such that we often have to take them out of the regular trains and put them to make the military movement.

Examiner Stiles: So far as this evidence about cutting down the carrying capacity of cars is concerned, it would be more enlightening and helpful to the Commission if you showed the average number of passengers per car in the former case, and at the present time.

Mr. Oliver: We have that information. Just a moment.

Examiner Stiles: Proceed with your examination of the witness, Mr. Oliver.

Mr. Oliver: All right.

By Mr. Oliver:

Q. Please state for the record the number of troop trains [fol. 1400] operated on Southern Railway System Lines during the months of April and May, 1943, and the number of cars handling troops operated in your regular trains during these months.

Mr. Bruce: I object to that. They are not public trains, they are special trains operated for the United States Army or the Navy.

Examiner Stiles: Are the passengers on those trains paying fares?

Mr. Oliver: They are paying fares.

Examiner Stiles: Are they involved in this case?

Mr. Oliver: They most certainly are, and we regard that as entirely pertinent, as going to the question of the reasonableness of the rate.

Examiner Stiles: The objection is overruled. Now, am I to understand that by "troop trains" you mean special

trains other than the regularly scheduled trains?

Mr. Oliver: That is right.

The Witness: That is correct.

Mr. Oliver: That is handling troops exclusively.

Mr. White: Do the troops on those trains pay a coach fare of 2.2 cents per mile interstate?

Mr. Oliver: With the exception of the discount on regular fares, 5 per cent, which Mr. Aiken will cover later in his testimony, and the land—that is so far as the land grant [fol. 1401] affects it. But, that will all be covered in his later testimony.

Mr. White: You mean to say there is no difference now in the coach fare interstate in Southern Territory of 2.2 cents per mile for civilian passengers, and for men in uniform?

Mr. Oliver: Mr. White, if you are talking about furloughed passengers, that is one thing; if you are talking about a troop train movement, it is another.

Mr. White: Let him tell just what the fare is.

Mr. Oliver: If you will bear with us, we will bring that out.

Mr. White: All right.

By Mr. Oliver:

Q. Proceed with your answer, Mr. Aiken.

Examiner Stiles: Let me ask this question also.

Mr. Oliver: Yes, sir.

Examiner Stiles: Preparatory to his answer.

Mr. Oliver: Yes, sir.

Examiner Stiles: Do some of these troop trains move at the intrastate fares here in the State, or some reduction based on those fares?

Mr. Oliver: I would have to answer that by—or I expect I had better let the witness answer it. I am certain there is.

The Witness: Wherever there is an intrastate movement the Government is given the benefit of the intrastate rate [fol. 1402] less an allowance that we have under contract with them.

Examiner Stiles: I think that clearly shows the admissibility of the evidence. Now, proceed with your answer.

Mr. Oliver: Please continue.

A. On the Southern Railway System Lines, during the month of April, 1943, there were operated 446 troop trains. Two hundred and eighty-nine (289) regular trains were operated in two sections and 1394 extra cars handling troops were operated in regular trains. During May there were operated on Southern Railway System Lines 345 troop trains. Three hundred and seventeen (317) regular trains were operated in two sections and 1458 extra cars handling troops were operated in regular trains.

Q. Does the Government pay full tariff fares for troop movements?

A. No. Between points between which no land grant is involved, an allowance of 5 per cent is made the Government from commercial fares of all classes. For example, from Birmingham, Alabama, to Anniston, Alabama, the intrastate commercial coach fare is $1.10. This is subject to 5 per cent deduction, the Government paying net fare of $1.04.

Between points between which the fares apply via route where land grant deduction is applicable, either in whole or in part, land grant deduction of 50 per cent is made from the commercial fare for that part of the route which is land [fol. 1403] grant and from the amount thus obtained an additional allowance of 3 per cent is made. For example, from Attalla, Alabama, to Birmingham, Alabama, the intrastate commercial fare is 99 cents which is subject to 50 per cent land grant deduction, leaving a gross fare of 49 cents. This latter amount is further subject to an allowance of 3 per cent, which yields net fare of 48 cents.

In Alabama, as in many other States, there is considerable land grant mileage. The entire line of the Alabama Great Southern Railroad in Alabama, a distance of 244.94 miles, is land grant.

The line of the Southern Railway from Selma, Alabama, to Jacksonville, Alabama, a distance of 145 miles, is also land grant.

There is substantial land grant mileage on other Alabama railroads.

The Government settles for this character of transportation only on the basis of the lowest net fare, regardless of the fact that the movement may take place over a route via which there is no land grant whatsoever involved. To illustrate, the published fare from Selma, Alabama, to Washington, D. C., is applied via Birmingham, Alabama Great

Southern Railroad, Chattanooga, Tennessee, Southern Railway, Bristol, Norfolk and Western Railway, Lynchburg, thence Southern Railway; it also applies via Western Railway of Alabama—Atlanta and West Point Railroad [fol. 1404] (via Montgomery) to Atlanta thence Southern Railway or Seaboard Railway to Richmond and Richmond, Fredericksburg and Potomac Railroad. The net fare is established via the route through Birmingham-Chattanooga-Bristol and Lynchburg, which is the route containing the land grant milease; the net fare so established is also applied via the Montgomery-Atlanta routes via which routes there are no land grant lines involved, but the lines operating over these routes only receive the competitive net fare and absorb the difference created by the land grant deduction.

Q. At the time the one-way coach fare for interstate transportation was increased to 2.2 cents per mile, was any exception made as to members of the armed forces in uniform on furlough?

A. Yes. Upon request of the United States Government, reduced round-trip coach fares on the basis of 1-¼ cents per mile were authorized for the personnel of the United States Army, Navy, Marine Corps, Coast Guard, Women's Naval Reserves, Women's Army Auxiliary Corps, Women's Coast Guard Reserves and Women's Marine Corps Reserves, traveling in uniform and at their own expense when on official leave, furlough or pass. This same fare is also accorded nurses, when not traveling in uniform, upon presentation of proper identification and, likewise, is accorded under similar conditions to the personnel of military forces of the several allied nations.

Examiner Stiles: Mr. Aiken, going back to your answer [fol. 1405] to a question before the last one, where you spoke of the less net fare being applied over competing lines, I think it would be pertinent to state whether that is done by the carriers voluntarily or whether there is some requirement of law.

The Witness: It is done under what we term, Mr. Examiner, the equalization agreement with the Federal Government. Answering your question specifically, unless some exception is shown, it is at the direction of the carriers themselves. The Government does not require it, but they won't pay any more by any route than by the longest land grant route.

Examiner Stiles: So that any reductions which the carriers receive in meeting the land grant rates over competing routes is a voluntary concession?

The Witness: That is correct.

Examiner Stiles: On the part of the carriers?

The Witness: That is correct. But if the land grant did not exist, of course that situation would not be there.

Mr. Bruce: And if the competing line did not want to meet the situation they would not have to either, would they?

The Witness: They would have to meet it, Mr. Bruce, unless they make some exception to the equalization agreement.

Mr. Bruce: But they are not forced by the law to enter into the agreement?

The Witness: No, there is no law.

Mr. Bruce: They merely want to meet the competition?

[fol. 1406] The Witness: That is right.

Mr. Bruce: And they meet it?

The Witness: In some instances they endeavor to do it by routes they consider non-serviceable routes, and they have a committee in Washington that sits on those routes and rules whether they are or not practical routes. However, they have to be settled; if they are not, they are not accepted.

Examiner Stiles: Taking your answer to the last question that your Counsel asked you, this 1¼ cents per mile, that was a rate concession voluntarily agreed to by the carriers as I understand it.

The Witness: At the request of the military branches of the Government.

Examiner Stiles: Yes, sir. Thank you.

The Witness: Yes, sir.

Examiner Stiles: Proceed.

By Mr. Oliver:

Q. Now, you have referred, Mr. Aiken, to the interstate rate of 1¼ cents per mile for round-trip transportation for soldiers and men and women in uniform on furlough. There has been no proposal to increase this furlough fare for intrastate travel in Alabama, has there?

A. No, sir, no proposal is made to increase the round-trip fares for this character of traffic, either on interstate or intrastate traffic.

[fol. 1407] Q. So far you have dealt primarily with the matter of one-way coach fares. The railroads are here seeking not only to put intrastate coach fares on the interstate basis but are also seeking to make certain changes in round-trip fares not only in coaches but in pullman cars. Please explain the present set-up of round-trip fares for interstate travel and state what relief the railroads are here seeking with respect to their intrastate round-trip fares in coaches and pullman sleeping and parlor cars.

Examiner Stiles: Just to make clear the position of the carriers, since you have had your witness to comment upon these fares which are a concession voluntarily made by the carriers, is it your position that you have a right to make up on the civilian travel and fares that they pay for the concession that you have made on this military business?

Mr. Oliver: No, Mr. Examiner. The position of the carriers is that the 2.2 cents per mile, which is being charged for interstate transportation, is a reasonable fare, and that it is reasonable for an intrastate transportation in Alabama, and we are not seeking to make up on civilian traffic any deficit or any loss of revenue on military travel.

Mr. Miller: May I point out the reasonableness of the intrastate rate is a matter for the Alabama Public Service Commission, is it not?

Mr. Oliver: Not in this proceeding.

[fol. 1408] Mr. Bruce: It is, in this proceeding. The Courts have held and the Commission has held time and again that the Alabama Commission is the rate-making body in Alabama. We are going into a proceeding here, Mr. Examiner, that I don't understand. It is a departure from *from* any Section 13 case that I have ever been in, in which these people are justifying the rates at the present time. I thought the investigation covered whether or not prejudice and preference was going to be proven by these people appearing here today.

Examiner Stiles: I think Mr. Oliver's answer to my question shows that this was put in just to present a full picture of the situation, and not as justifying the basis of the civilian passenger fares.

Mr. Bruce: I want to point out the fact that Counsel has not asked for a reconsideration of this Commission's decision, to start with. It has departed from all similar pro-

cedures by not making Exhibit 1 a copy of the record made before the Alabama Commission.

Mr. Oliver: We will be glad to have you furnish it.

Mr. Bruce: I will furnish it.

Examiner Stiles: Proceed, Mr. Oliver.

By Mr. Oliver:

Q. So far you have dealt primarily with the matter of one-way coach fares. The railroads are here seeking not only to put intrastate coach fares on the interstate basis, but are also seeking to make certain changes in round-trip [fol. 1409] fares, not only in coaches, but in pullman cars.

Please explain the present set-up of round-trip fares for interstate travel, and state what relief the railroads are here seeking with respect to their intrastate round-trip fares in coaches and pullman sleeping and parlor cars.

Examiner Stiles: Off the record.

(Discussion had off the record.)

Examiner Stiles: Proceed.

The Witness: Prior to October 1, 1942, in the Southeastern and other territories, there was in effect round-trip fares constructed on various basic fares per mile and with varied return limits.

With the approval of the Interstate Commerce Commission, effective October 1, 1942, the lines generally in all territories in the United States adopted two separate character of round-trip fares, i. e., one good for transportation in pullman sleeping or parlor cars and the other good for transportation in coaches only, both to bear a uniform return limit of three months from date of sale and these round-trip fares are now in effect for interstate travel.

The fares so approved in Southeastern territory for tickets good for transportation in sleeping or parlor cars are constructed on basis of 166⅔ per cent of the one-way fare of 3.3 cents per mile good for transportation in sleeping or parlor cars, or 2.75 cents per mile for the distance traveled.

[fol. 1410] The round-trip fares good for transportation in coaches are constructed on the basis of 180 per cent of the one-way coach fare of 2.2 cents per mile or 1.98 cents per mile for the distance traveled. The Alabama carriers are seeking to establish exactly the same basis of round-

trip fares for intrastate transportation in Alabama as is now in effect for interstate traffic to and from points in Alabama. To accomplish this it is proposed that the current thirty day limit round-trip fare on basis of 2.475 cents per mile and the six months limit fare on the basis of 2.75 cents per mile, both good for transportation in sleeping or parlor cars, be cancelled and that there be substituted in lieu thereof the round-trip three months limit fare on the basis of 2.75 cents per mile; also, that the current fifteen day limit coach fare on basis of 1.485 cents per mile and the sixty day round-trip coach fare on basis of 1.65 cents per mile be cancelled and that there be substituted in lieu thereof round-trip three months limit fare on the basis of 1.98 cents per mile.

Examiner Stiles: And on the F-deral transportation the present percentages would be applied to these fares that you are proposing to now establish?

The Witness: They would be identical with the Commission's order or authority, on the same basis, yes, sir, if I understood you correctly.

Mr. Oliver: Do you refer to troop movements?

[fol. 1411] Examiner Stiles: Yes, under your percentages at the present time, you have certain fares for persons in the armed services, which are based on percentages of the established fares. Now, would you continue those precentages of these, to apply them to these new fares that you are seeking to establish? Is that correct?

The Witness: They would be on the one-way. The Federal Government, military branches, get the lowest commercial fare at all times, less these allowances, but on the round-trips they are not allowed anything.

Examiner Stiles: These fares that you are seeking to establish would become the basis for the special fare for persons in the military service?

The Witness: If they were authorized and applicable, yes, sir.

By Mr. Oliver:

Q. Aside from any question of the revenue involved, would the placing of the intrastate fares on the interstate bases be of any benefit to the carriers at this time?

A. Yes, under the existing conditions it would be most helpful to ticket agents, conductors and others if the several classes of intrastate fares were made uniform with

the interstate fares and it would assist materially in giving more prompt service as it would require only consulting the one publication in which the character of fare, or fares, desired was published. Whereas, at present interstate fares [fol. 1412] are published in one set of tariffs and the intrastate fares in others.

It must be remembered that the personnel in the ticket offices has been greatly increased and this personnel, of a necessity, is untrained and everything that would assist in simplifying the work is to be highly desired. This same statement applies with equal force to the new personnel in the general offices.

Examiner Stiles: Now, that answer, as I understand you, goes merely to the desirability and facility of having all the fares in one publication?

The Witness: No, no, that would not be so. They are different publications.

Examiner Stiles: I say the answer goes to the desirability of having all the fares in one publication, rather than two, an interstate and an intrastate tariff.

The Witness: Oh, yes, in that case, yes, that is right.

Examiner Stiles: There is nothing that prevents you from putting them in one publication at the present time, is there? In other words, the carriers do have tariffs on freight, do they not, at the present time, filed with the Interstate Commerce Commission which also contain intrastate fares or charges, and are so designated in the tariff? Don't you have such tariffs?

The Witness: No, we have in the States, we have the interstate fares published, all characterized that they do [fol. 1413] not apply intrastate, but they are the interstate fares. We don't have in our interstate tariff an intrastate tariff of fares, characterized that they do not apply on interstate traffic. I don't know whether the Commission will permit that or not.

Examiner Stiles: I asked you whether that is not actually done as to freight rates.

The Witness: You are over my head when you talk about freight rates. I don't know anything about it, I can only confine my answer to passengers.

Examiner Stiles: Off the record.

(Discussion had off the record.)

Examiner Stiles: Let's go on with the hearing. Proceed, Mr. Oliver.

By Mr. Oliver:

Q. Mr. Aiken, your answer went further than the Examiner indicated, as I understood it, and that was that in addition to the matter of publication, he would only have one set of rates to compute?

A. That is right.

Q. The interstate rate and the intrastate rate would be on the same basis, and it would not be 1.65 cents intrastate and 2.2 cents interstate, isn't that your answer?

Mr. Bruce: Be very careful. If you are not, I am going to introduce your tariffs.

Examiner Stiles: Let's get that clear. Does the agent compute the fare?

[fol. 1414] The Witness: The agent does not compute the fare at all. The tariffs are published with total fares, and wherever these additional amounts have been added or deducted, that is done by what we know as "conversion tables," and we could get away from that and put them all in total fares. Great strides have been made throughout the United States on that, and at the request of the Commission to put all fares in total figures, and each and every one of our individual lines publishing agents have been working to that end, to get them in that shape. A great percentage of the work has been done. It is not in effect where we have the two tariffs in effect in intrastate movements in some cases.

By Mr. Oliver:

Q. Now, Mr. Aiken, in answer to a question I believe from Chairman White of the Alabama Public Service Commission you made a statement as to the crowded condition of trains, people standing in aisles. I understand that—or are we to understand that that is a general situation all over the Southern Railway System and the railroads generally?

A. No, I think that is only a matter of instances where more people show up for the trains than the equipment is able to provide for, and we haven't additional equipment to throw in at that particular point.

Q. You are doing the best you can with the situation as it exists?

A. Oh, undoubtedly.

[fol. 1415] Mr. White: Have you traveled much in Alabama in the last year?

The Witness: No, I haven't.

Mr. White: On your passenger trains?

The Witness: No, I haven't traveled in Alabama the last year.

Mr. White: How many trips have you made on passenger trains in Alabama during the last twelve months?

The Witness: My trips are not locally in Alabama, they are largely long-distance trips, where I have to go to conferences and meetings and things of that sort.

Mr. White: Between Atlanta and Washington?

The Witness: Between Atlanta and Washington, Atlanta and Chicago, and Cincinnati.

Mr. White: All right.

The Witness: Jacksonville, and New Orleans.

Mr. Oliver: I believe that is all on direct from this witness. I would like to tender in evidence Exhibits 1, 2, and 3, which have been identified by the witness.

Examiner Stiles: Exhibits 1, 2, and 3 are received in evidence.

(Exhibits Nos. 1, 2, and 3, witness Aiken, received in evidence.)

Examiner Stiles: Exhibits 2 and 3, being received subject to the objection which the record shows was made by Mr. Bruce. Off the record.

[fol. 1416] (Discussion had off the record.)

Examiner Stiles: We will take a short recess.

(Short recess.)

Examiner Stiles: You may cross-examine the witness.

Mr. Burkett: Mr. Examiner, before we start, may I make my appearance? I have already filled out the blank, but I have not made an oral appearance. I got in late.

Examiner Stiles: Yes.

Mr. Burkett: James E. Burkett, Post Office Box 79, Montgomery, Alabama, appearing for the Montgomery, Alabama, Chamber of Commerce; the Florence Chamber of

Commerce, the Anniston, Alabama, Chamber of Commerce, the City of York, Alabama, City of Union Springs, Alabama, City of Clanton, Alabama, and the Birmingham Traffic Association, Birmingham, Alabama.

Mr. Bruce: Are you a practitioner?

Mr. Burkett: Yes, I am.

Examiner Stiles: Are you a practitioner?

Mr. Burkett: Yes, I am.

Examiner Stiles: Did you prepare a petition of intervention?

Mr. Burkett: Sir?

Examiner Stiles: Did you prepare a petition of intervention?

Mr. Burkett: I did, and Mr. Bartel returned it, and said [fol. 1417] I didn't need to, that I could appear at the hearing. Mr. Bartel has copies of it. That is we sent him fifteen copies.

Examiner Stiles: You are appearing in support of whom?

Mr. Burkett: In support of the Alabama Public Service Commission.

Examiner Stiles: All right. Proceed.

Cross-examination.

By Mr. Bruce:

Q. Mr. Aiken, the Gulf, Mobile & Ohio Railroad, how many passenger trains do they operate in Alabama, intrastate and interstate, do you know?

A. I have no knowledge sir, but I think you will have a representative of the GM&O that can give you that information who is to appear.

Q. Didn't you state your testimony applies generally to the respondents in the State?

A. With the exception of the GM&O and the IC and St. Louis-San Francisco Railroad, as for the coach rate of 1.65 cents per mile. They already have the 2.2 cent rate effective in Alabama.

Q. Would the same apply with reference to the Illinois Central System and the Frisco?

A. My understanding is it does, yes, sir.

Q. You have no knowledge of their operations in Alabama?

A. I have no knowledge of the trains that they operate.

Q. You did not appear before the Alabama Public Service [fol. 1418] Commission in the investigation held before the Alabama Commission?

A. No, sir. I would be very glad to explain to you why I did not. At that time I had a very sick wife, and it was impossible for me to leave Atlanta. I have since lost her. That was the reason I was not down here.

Q. In reference to the petition that was filed by Mr. Leon Henderson, the Price Administrator, before the Interstate Commerce Commission, on August 1, 1942, was that petition filed after the Commission had made its order permitting the amendment, that is amending their former order with reference to interstate coach fares?

A. My recollection of it is that they gave us the order on August 1, 1942, to increase our coach fares to 2.2 cents per mile, and then Mr. Leon Henderson petitioned them to suspend it.

Q. In other words, the requested suspension of the tariffs naming the new fares, the new fares that had been permitted by the Commission?

A. Yes, for that to be done, yes, sir, and it was declined.

Mr. Miller: May I point out a matter of which the Commission can take judicial notice, that this tariff became effective one day before the approval date of the tabilization act of October 2, 1942, which gave the President's nominee the privilege of intervening in those proceedings?, [fol. 1419] Therefore, the stabilization act was not applicable to these particular increases in question.

By Mr. Bruce:

Q. Did you know that the applicants before the Alabama Commission stated that the Commission had specifically approved the fare of 2.2 cents per mile in coaches?

A. Yes, they did.

Q. And do you state that?

A. Yes, sir.

Q. That the Commission specifically approved them?

A. Yes, they approved that in the Ex Parte 148 case, when they increased the fares 10 per cent, and in the 26,500 case they approved the 2 cent fares as being reasonable, and made reference to the 1.65 cent fares as not being unlawful.

Mr. Oliver: You mean 1.50?
The Witness: 1.50, at that time.

By Mr. Bruce:

Q. And the petition was filed by the Office of Price Administration requesting the suspension of these tariffs. Do you know what the Commission said in the order denying the suspension?

A. In what respect, sir?

Q. In respect to the lawfulness and the reasonableness of the fares published in the tariffs?

A. Generally.

Q. Of which suspension was requested?

A. Yes, generally speaking, they said that——

[fol. 1420] Q. What did the Commission say?

A. I can't quote it. I haven't got it in front of me, but it is a matter of record.

Mr. Oliver: I think, Mr. Examiner, the order will speak for itself, and I might also call attention to the fact that the—I don't recall, but they probably said what they say in all suspension cases.

Mr. Bruce: In other words, that the tariff was not investigated, and the lawfulness of the rates published therein had not been passed upon by the Commission.

Mr. Oliver: The order will speak for itself.

Mr. Bruce: We will talk about the order in our testimony.

By Mr. Bruce:

Q. Are you familiar with the Commission's decision in ICC Docket No. 26,550; are you familiar with the order of the Commission in that case, fares and charges?

A. Yes.

Q. In the United States?

A. Generally speaking I am, sir.

Q. Are you familiar with it?

A. Yes, sir.

Q. In that case did the Commission state that the fare of 1.5 cents per mile was not unreasonable, nor otherwise unlawful?

A. My recollection is that they did, and I testified to that a moment ago.

[fol. 1421] Q. Did the Commission in that case state that the 2 cent fare in coaches would be the maximum reasonable fare?

A. My recollection is that is so, and also that the 3 cents would be the maximum in the sleeping cars.

Q. Did your railroad, did the Southern Railroad specifically request the Commission in that case not to interfere with the so-called "experimental" fares of 1.5 cents?

A. We did sir.

Q. What was the condition of your revenues at that time?

A. They were at a very low ebb.

Q. What?

A. They were at a very low ebb.

Q. Were they much lower than they are now?

A. Yes, sir.

Q. Why did your system request the Commission not to interfere in any way with these 1.5 cent coach fares, do you know?

A. Yes, sir.

Q. Why?

A. We were endeavoring to attract traffic back from the highways to our coaches which had become almost nil. And when I refer to the highway, I mean largely the privately owned car. The buses we estimated were about 15 to 20 per cent of our loss.

Q. In other words, you were trying to attract back to your railroad passengers who were riding in private cars [fol. 1422] primarily, is that right?

A. That is correct, sir.

Q. By making the rate attractive?

A. That is right.

Q. What caused you to change your position today?

A. There is a considerable difference between today and those days. As a matter of fact, today we are trying to keep the public off of our trains.

Mr. White: Trying to do what?

The Witness: Trying to keep the public off of our trains.

Mr. White: Is that the purpose of the increase in your fares?

The Witness: No, sir.

Mr. White: From 1.65 to 2.2 cents per mile?

The Witness: That is not exactly the purpose, no. The purpose is to put it on an equality with the interstate fare,

the same as we did when we put 1.5 cents a mile into effect. We made that interstate.

Mr. White: There has been reference made by you here to the decision of the Commission in Ex Parte 148, both the original petition, and then the decision recently issued, sometime recently issued when the case was reheard on the petition of the Office of the Price Administration. Doesn't the Commission itself in its report in this last case state that the railroads offered this increased coach fare with [fol. 1423] one purpose, to discourage travel on the train?

Mr. Oliver: Just a moment.

Mr. White: Do you know whether that is true or not?

Mr. Oliver: Just before you answer that, Mr. White, you objected very strenuously,—or perhaps I should address the Examiner. Mr. White has objected to any interpretation or any discussion of the Ex Parte 148 order by this witness. Now, he is insisting that he tell him what the order provided.

Mr. White: I am trying to ask——

Mr. Oliver: I think he is entirely inconsistent about it, to say the least.

Mr. Bruce: The Examiner overruled the objection.

Mr. White: I am not asking him to interpret the order, or the report, but I am asking whether he knows that the Commission in its report states that one of the purposes of the increased passenger fares was to discourage the public from traveling on the train. He says they are trying to discourage them.

The Witness: No, I didn't say that the Interstate Commerce Commission made any such statement. In fact to the best of my knowledge and belief they did not. The one who makes that statement, or the one who has requested it is the Office of Defense Transportation, Mr. Eastman.

Mr. White: But you do state now the railroads are trying to discourage the public from traveling on your trains? [fol. 1424] The Witness: We are trying to comply as far as humanly possible with the request of the ODT in an effort to stop rationing of passenger travel.

Mr. White: What have you done to discourage it?

The Witness: Well, that is a difficult question to answer, Mr. White. Naturally, the public wants to go. But I presume you have read large newspaper advertisements issued by our President, Mr. Ernest Norris, one of them reading at the head he never thought he would ask people not to

ride on his trains, and it is about a five or six column advertisement, and about twelve or fifteen inches long.

Our passenger representatives have been definitely instructed that they must not solicit passenger traffic of any kind, class or description. The question of meetings which were always a great source of revenue to us in the old days, have been discouraged. We do not operate extra cars, if you please, for baseball teams. The ODT has requested the——

Mr. Bruce: Now——

Mr. Oliver: His answer is responsive to the question.

The Witness: (Continuing)—has requested the baseball heads not to ask for mass reservations. And there are many little things like that that have been done to discourage passenger travel.

By Mr. White:

Q. If it is true that the intrastate fares in Alabama on the [fol. 1435] common carrier buses is lower than 2.2 cents per mile, and the railroads put on this 2.2 cents per mile intrastate rate in the Southern States, as well as they have it interstate, what will be the effect on the public as to passenger traffic on the buses?

A. Well, that is another difficult question to answer, but I would say, human nature being as it is, it would probably seek the lowest fare. But the buses, at the same time, Mr. White, are having their difficulties in furnishing sufficient transportation to take care of anybody. We have been very glad to ask them to take some of ours.

Mr. White: All right.

By Mr. Bruce:

Q. Now, you stated a few moments ago that in 1936 your finances were in bad shape, you needed money. Is that right?

A. No, I didn't say that. I said our passenger earnings were at a low ebb.

Q. All right, a low ebb. What is the condition of your finances at this time, do you have knowledge of that?

A. I have no knowledge, but I think we have a witness who can give you those statistics.

Mr. Oliver: We do have, Mr. Examiner, a witness who will go into the statistical data and accounting information that Mr. Bruce apparently seeks.

Mr. Bruce: I asked him the question, due to the fact he made reference to the finances of the Southern Railway.

[fol. 1426] Mr. Oliver: Yes.

Mr. Bruce: And he is assistant passenger traffic manager of the Southern Railway, and he should have some knowledge of the financial condition.

The Witness: I have knowledge of the passenger earnings, if that is what you have reference to.

By Mr. Bruce:

Q. So you don't know that?

A. Not as to the complete financial structure of the Southern Railway System Lines, no, sir, but I can tell you what the passenger earnings are, if you would like to know that.

Q. Did you know that the Southern Railway in its appearance before the Alabama Public Service Commission stated through its Counsel, Mr. Oliver, that the application before the Alabama Commission was to some extent a revenue case, and the other condition was the removal of prejudice? Did you know that?

A. Yes, I understood that he did.

Q. Do you agree to that?

A. Yes, sir.

Q. You just stated you were trying to divert traffic away from yourself at the present time. Was that one of the reasons you raised your fares?

A. I think that is a very simple thing to answer.

Mr. Oliver: I think now, if you will pardon me, Mr. Examiner, the witness made no such statement. He did make [fol. 1427] the statement that the railroads were trying to discourage travel.

Mr. Bruce: What's the difference?

Mr. Oliver: In answer to a question from Mr. White as to whether or not the purpose of this increase was to drive people off trains, he distinctly said "No."

Mr. Bruce: I am going to ask Counsel to state to the Examiner now on what grounds he appeared before the Alabama Commission in the application for the increase of coach fares, and other fares.

Mr. Oliver: We are not trying that issue, Mr. Examiner.

Mr. Bruce: We are trying that issue. Mr. Examiner, we are before the Commission today——

Mr. Oliver: I don't mind stating it now if the Examiner wants to hear from me on the subject. I am perfectly willing to make the statement.

Mr. Bruce: I have made a request. Unless the Examiner overrules my request, you state upon what grounds you appeared before the Alabama Commission.

Mr. Oliver: Do you want to hear from mr, Mr. Examiner, on the subject?

Examiner Stiles: I will leave it to your judgment to state it or not, as you like.

Mr. White: I think, if you are going to offer the transcript of testimony before the Commission in that case, which [fol. 1428] counsel says he——

Mr. Bruce: I withdrew the question. I will place the record before the Examiner as an Exhibit.

Mr. White: It will show what happened.

By Mr. Bruce:

Q. You stated, of course, that you did not know why the Frisco and the Gulf, Mobile & Northern and the Illinois Central had kept their fares at 2.2 cents per mile.

A. I didn't make any such statement as that, because I do know.

Q. Do you know?

A. Yes, sir.

Q. Why?

A. They followed the lead of the Western Lines.

Q. In other words, their operation is principally in the Western District, isn't that right?

A. No, their operation is largely in the Southeastern Territory. I described the Southeastern Territory in my testimony as being that territory lying east of the Mississippi and south of the Ohio and Potomac Rivers, and the GM&O operates exclusively in that territory with the single exception of getting into St. Louis, but I did say it included the gateway; and the St. Louis-San Francisco is in the same boat.

Q. Tell me why they maintain higher fares in coaches than the Southern, if you know.

A. That is a matter of judgment of the traffic officers of [fol. 1429] those lines. They wanted to keep their line on a uniform basis all the way through.

Q. Their lines where on a uniform basis?

A. The Illinois Central, for example, in their operation north of the Ohio River, north of Cairo. The Frisco operates west of Memphis.

Q. That would be out of the southern region?

A. Yes.

Q. What part of Louisiana is in the southeastern district?

A. That portion lying east of our lines—I don't know as I can tell you offhand.

Q. A very small portion?

A. A very small portion is in Louisiana, because we only have a very small mileage in Louisiana.

Q. The other portion would be in what district?

A. In the Southwestern Passenger Association District.

Q. Did you appear before the State Commission of Florida?

A. No, sir.

Q. Louisiana?

A. No, sir?

Q. Mississippi?

A. No, sir?

Q. South Carolina?

A. No, sir?

Q. Virginia.

[fol. 1430] A. No, sir. I have explained the reason why I did not, though.

Q. Tell me why? You have explained already?

A. Yes, I explained to you why I did not come to Alabama.

Mr. Oliver: And the same reason applies to the other States?

The Witness: And the same applies to all of the other States.

By Mr. Bruce:

Q. Do you know whether or not these States held an investigation?

A. Yes.

Q. Are you familiar with the matters before these Commissions of record?

A. Yes, I have testified that certain of these States, gave the names of the States, had already granted the petitions,

and the other States in which the petitions were not made because the law did not require it, those tariffs were filed, and they did not suspend. The hearings had not been held, and the decision of the regulatory bodies had not as yet been released in some States, and Mr. Oliver has told you that since that time Kentucky has declined the petition, and a Thirteenth Section request has been placed before the Interstate Commerce Commission.

Q. In other words, their laws are such that they could not do very much about these fares, whether they wanted [fol. 1431] to or not, isn't that right?

A. No, I don't understand that to be the case in all States.

Q. Can they suspend the tariff, any of these States suspend the tariff?

A. They did suspend it.

Mr. White: I think that is a question of law, Mr. Bruce.

The Witness: I think so too, and I am not capable of answering it.

Mr. White: Probably the witness would not be able to advise us about the law.

The Witness: I know that they did suspend them.

By Mr. Bruce:

Q. Now, let us talk about your so-called de luxe trains. What trains does the Southern operate in interstate commerce that contain this so-called air conditioned, de luxe equipment, through the State of Alabama, in interstate commerce?

A. The Southerner, which is a streamline train from New York to New Orleans, the Tennesseean, which is a streamline train from Washington to Memphis. Those are the only two fully streamlined trains that the Southern Railway operates in Alabama. They both pass through Alabama.

Q. Where does the first one come into Alabama, what is the first point in Alabama that your first train that you mentioned just now touches Alabama?

A. It comes in over on the Birmingham Division at the [fol. 1432] Georgia-Alabama State Line.

Q. Where does it go out at, the last point in Alabama?

A. It goes out at the Alabama-Mississippi State line.

Q. Do you know the stops made by that train in Alabama?

A. They are a matter of record. I think Mr. Oliver gave you those. I don't all of the detailed stops, no.

Q. Do they make one, two, or three, or a half dozen stops, or what?

A. I can tell you.

Mr. Oliver: Give him that information.

Mr. Bruce: I want to know.

Mr. Oliver: It is not on the record. Off the record.

(Discussion had off the record.)

The Witness: No. 47 stops in Anniston, Alabama, Birmingham, and Tuscaloosa.

By Mr. Bruce:

Q. Three stops in the State of Alabama?

A. Yes, sir.

Q. Now, does a passenger have to have a reservation to get on the so-called revolving seats of yours?

A. Yes, sir.

Q. And these air conditioned cars?

A. Yes, sir, the space on the train is limited, and it is all reserved.

Q. You don't pick up any passengers at any intermediate point in the State of Alabama, in crossing the State, with [fol. 1433] the exception of the three points, or discharge passengers, except at those points, do you?

A. That is the only points they stop at, unless some stop is made at some other point for operating reasons.

Q. Do you know whether there has been any available space in the past year for Alabama passengers, in intrastate commerce?

A. Intrastate? Or interstate, did you say?

Mr. Oliver: Intrastate, he said.

The Witness: No, the space is assigned I believe to the individual offices, and they use it to the best advantage. For instance, Birmingham might have space assigned to it and use it to Anniston, and turn it over to Anniston to use for some place else.

Q. An Alabama passenger who resided at any point else than these three points would not have access to your service offered on that train?

A. He would have to go to one of those points to get on to it.

Q. He would have to wait for another train, or use his own means of conveyance, is that right?

A. Whatever mode of transportation he wanted to use.

Q. Now, the other train that you mentioned as serving Alabama, where does that come in at?

A. That comes in at the Tennessee-Alabama line. I think it is Stevenson, but I want to be sure. That is *is* right, it comes in at Stevenson.

[fol. 1434] Q. What is the name of that train, is that the Tennessean?

A. That is the Tennessean, yes, sir.

Q. How many stops do you make in Alabama on that train?

A. It stops at Stevenson, Scottsboro, Huntsville, Decatur, Sheffield, and Tuscumbia.

Q. Where do you go out of the State, at what point?

A. At the Tennessee-Mississippi line, at about Cherokee.

Q. Does an intrastate passenger have access to that train excepting at these points?

A. No, sir, excepting that he gets to those points and boards it there.

Q. Has the loaded condition been practically the same on that train as it has been on all of the other trains?

A. Yes, sir, we are running fairly close to capacity at all times.

Q. Is the passenger required to have a reservation prior to the time he can ride in a coach on that train?

A. Yes, sir.

Q. From your experience as the assistant traffic manager, traffic manager of the Southern Railway Company, would you say that there has been any space, or has it not been any space in these two trains that you have testified about?

A. There has been space, of course.

Q. What?

A. There has been space.

[fol. 1435] Q. There has been space?

A. Yes.

Q. For Alabama passengers?

A. Yes, from Birmingham, we would have pasengers on that all the while.

Q. Haven't you——

A. Space is assigned to Birmingham regularly on that train, in both directions.

Q. Do you have assigned space at Birmingham for these trains?

A. Yes, sir.

Q. How many berths?

A. I couldn't tell you the exact number of seats assigned; no berths at all on the train, it is an all-coach train.

Mr. Bruce: Are you going to have somebody to testify that will know about that, Mr. Counsel, besides this witness?

Mr. Oliver: I rather doubt it.

The Witness: You see what actually happens is, should there be any sold space coming into Birmingham, it is like on all trains, it is telegraphed ahead to the next point that the trains stops at, and is used from that stop. If it is not used there, it is telegraphed to the next stop. That is not unusual in any operation of any train.

By Mr. Bruce:

Q. Did you state in your testimony in answer to one of Mr. White's questions that these trains are all loaded today, that your wash rooms and aisles, and so on, were usually [fol. 1436] crowded with passengers?

A. I said that there were times that they were, yes, sir; not always, no.

Q. Do you want to change your testimony at the present time and state there is space on these trains for intrastate passengers?

A. I didn't make that statement, I made the statement that at times all of the space, all of the smoking rooms and the club cars were occupied, but that was not every day. I might amplify that a little bit, but that is what I intended to convey by what I said.

Q. On page 8 of your statement, in answer to the second or third question on that page, you stated "No" there. "Do you, as an experienced railroad passenger traffic officer, know of any reason which would justify the maintenance of a fare of only 1.65 cents per mile in intrastate coach transportation within the State of Alabama, when an interstate passenger traveling to or from points within the State is required to pay 2.2 cents per mile" and you stated "No". Now, on what grounds did you arrive at that conclusion?

A. I think the grounds of equity to start with. There is not any particular reason why a man riding from "A" to "B" which is interstate should ride from "B" to "C", which is intrastate, at a less rate per mile.

Q. Suppose the man riding from "A" to "B" didn't [fol. 1437] have any room to get on the train unless it happened to be a section of a third class train?

A. That is a supposition. I cannot answer that just exactly, what you have in mind. The train operates, and it is like a hotel, when you go in, if its capacity is filled up, that is just the answer, there is not anything more. We experienced that yesterday when we arrived at Montgomery. We had to wait until last evening for the rooms, to get located.

Q. In your illustration of fares between Birmingham and Chattanooga, Tennessee, do you know of anybody—and I want his name, and I want to know where he lives at,—that has used the combination of an interstate and and intrastate fare to defeat interstate commerce?

A. I testified, Mr. Bruce, to the fact that I didn't know, but it was common knowledge that that thing was indulged in.

Q. Have you ever had an agent tell you that they sold that kind of a ticket?

A. No, I have never had an agent tell me that, but I have had an agent ask me if he couldn't do it, and I have told him no.

Q. You told him that he could not?

A. That he could not.

Q. Because it was unlawful?

A. That is right.

Q. Would the same apply on a ticket, one-way coach ticket, from Birmingham, Alabama to Chattanooga, Ten- [fol. 1438] nessee—in any of your illustrations that you have made here in your testimony, do you know the name of any one, and his residence, that has used that combination?

A. No.

Q. To travel on?

A. I have stated several times I did not know.

Q. So that as far as you are concerned, it is a theory that he could do it, but you don't know whether any one has or not, is that right?

A. I said that it was a matter of common knowledge that it had been done, but that has only been from my own representatives.

Q. I presume that you were a ticket agent at some time or other?

A. Away back in the Dark Ages, yes, sir.

Q. Would you say that 99 per cent of the traveling public would know anything about a railroad fare, that travels?

A. A great many of them do. I don't know what the percentage is, but a great many come in and ask for it.

Q. What percentage is it?

A. I would not try to estimate it.

Q. I am asking your opinion?

A. I wouldn't know.

Q. You have no opinion?

A. I have no opinion on it, no, sir.

Q. You stated you have issued instructions to your [fol. 1439] agents when they requested that authority that they could not use this combination intrastate-interstate?

A. Not only that, but I have stated to them they cannot use what we know as "split tickets", issue one ticket to one point, and re-issue another from that point in order to defeat a through rate.

Mr. White: I would like to ask the witness this question.

By Mr. White:

Q. You stated several times in your testimony that it is a matter of common knowledge that some people have defeated the interstate rate by coming into a State on the interstate fare, and then buying an intrastate ticket. Now, just tell the Commission how you base your statement on it being a matter of common knowledge.

A. Well, individuals go into your offices, and they make inquiries.

Q. You say you have not been a ticket agent since the Dark Ages?

A. That's right.

Q. What are you testifying about now?

A. I am testifying because my representatives passed that information along to me. It is quite impossible for one individual to be at all ticket offices on a railroad the size of ours.

By Mr. Bruce:

Q. Now, in line with your statement just now, what amount have you been deprived of in revenue due to the [fol. 1440] fact that the Alabama Commission did not grant the 2.2 cents per mile fare?

Mr. Oliver: Mr. Examiner, we have a witness who is going into that quite fully.

Mr. Bruce: Wait a minute. I didn't quite get through with my question.

Mr. Oliver: All right.

By Mr. Bruce:

Q. (Continuing)—because of such violations as you have pointed out here, if any?

A. I have none, sir.

Q. You don't know?

A. No, nobody knows.

Q. Nobody else knows?

A. It is an unknown quantity.

Mr. Oliver: Off the record.

(Discussion had off the record.)

By Mr. Bruce:

Q. In your Exhibit 2 then, all of the examples that you have named here are theoretical only, isn't that right? It could be done if a man knew how to do it?

A. They are so headed.

Q. And if he could deceive your agent—

A. They are so headed there.

Q. Supposing that your agent here saw a passenger train that arrived at the border point in Alabama, and the passenger had come in from interstate commerce, and the man [fol. 1441] would get off that train, and he would go into your station; would your agent sell him a ticket to continue that interstate travel?

A. He wouldn't know anything else.

Q. I said if he saw him get off the train.

A. Of course, he would sell it to him. He wouldn't know where he came from. He might be an interstate passenger, and he couldn't refuse it anyhow.

Q. You have never issued instruction to your agents not to sell that kind of ticket?

A. No, sir.

Q. Do you know of any instance where one of your agents did sell such a ticket?

A. No, I never heard of him selling it.

Q. You never heard of any of them selling that kind of a ticket?

A. No.

Q. That would be true of every one of the illustrations you have made in three pages, or four pages, of your Exhibit No. 2, is that right?

A. Yes, sir, that would be absolutely correct, I don't know of a single one in which it has been done.

Q. And the same would be true of Exhibit No. 3, is that right?

A. No, Exhibit 3 is an entirely different story. Exhibit No. 3 shows the intrastate fare at a certain fare, and the interstate fare at a higher rate.

Q. I beg your pardon?

[fol. 1442] A. Yes.

Q. Your entire statement is based, as to your Exhibit No. 2, it is based upon the supposition that somebody might do that?

A. Mr. Bruce, it is so headed.

Q. Now, at these points, these border points in Alabama that your passenger trains arrive at in interstate commerce, are these stations open 24 hours a day, or 8 hours, or how long?

A. I don't know whether they are or whether they are not but I think you are not looking at this time in a broad angle. It is not always at the State point that this thing can be done. Going back to your statement a minute ago about the streamliner out of Birmingham, a person can come in from some road leading into Birmingham, buy an intrastate ticket to Birmingham, go over to the Southern Railway station and buy an interstate ticket and defeat the interstate fare from the point that he started from.

Q. Between what two points?

A. Any two points. There are hundreds and thousands of them.

Q. You didn't make an illustration here. Are you positive of that?

A. At all big distributing points, that is true.

Examiner Stiles: Don't you think you have dwelt long enough on that point? The witness has told you that all of those cases are theoretical, that is not evidence of particular instances. You have required him to state that over [fol. 1443] and over. It occurs to the Examiner that you have spent enough time on that point.

Mr. Bruce: Mr. Examiner, the Commission made that statement in a number of cases that I know of, of course, but there was not an unlawful condition when the Commission made that statement. I shall give you a lot of citations which show that, in my testimony, where the Commission and the Court said time and time again that these conditions cannot exist, because it is an unlawful condition. You cannot make theory out of an unlawful condition.

Examiner Stiles: Mr. Bruce, perhaps you didn't understand me. I say in the opinion of the Examiner you have dwelt with the witness on that point until you have fully exhausted it. I think you should pass on to some other point in your cross-examination.

Mr. Bruce: The reason I asked about the opportunity of an agent doing that, you would have the opportunity of buying at some point to bring about that condition, and the witness of course knows that.

The Witness: That is what I have been testifying to all day.

By Mr. Bruce:

Q. Supposing now that one of your conductors was asked by a passenger to sell him a ticket to continue an interstate journey, would your conductor sell him a cash fare ticket? [fol. 1444] A. In the first place, I don't think the passenger would ever ask any such question. In the second place the conductor would not know. He would pull his cash fare ticket from wherever he was tendered his money.

Q. You never put out a bulletin to any of your employees, station or otherwise, that such condition is unlawful?

A. No, we have not tried to police this thing, because as I have said in my testimony, it is an absolutely impossible thing to police.

Q. I am going to ask you if you know of a single instance in which an intrastate train has been operated as an extra train in Alabama to transport intrastate civilian passengers during the last year?

A. I have no knowledge of that, but I think perhaps our operating witness may be able to tell you something about that.

Q. You made a statement here that you did have knowledge?

A. In what respect?

Mr. Oliver: May I have that last question read please?

(The question was read.)

Mr. Oliver: No, the last one before that.

(The previous question was read.)

The Witness: He means absolutely intrastate, that is his question as I got it, between two points wholly within the State.

By Mr. Bruce:

Q. To points wholly within the State?

[fol. 1445] A. We know of many cases where our trains have been operated interstate that accommodated Alabama passengers, yes.

Q. Do you know or do you not?

A. Yes, I know second sections have been operated many times.

Q. To accommodate intrastate civilian passengers?

A. No, interstate passengers coming from Alabama.

Q. I asked you about intrastate civilian passengers?

A. Yes, and I answered you that I did not know anything of any such instances of that sort. Perhaps our operating witness could tell you about it, I said.

Q. Your troop train movements, most of that is operated on a second or third section of your regular train, isn't that right?

A. No, sir, it is operated as a special in many, many cases, and the others as sections.

Q. As sections?

A. Yes.

Q. On your interstate civilian trains of all classes you have so-called "party military movements" on these trains, do you not?

A. Have priority military movements?

Q. No, party military movements?

A. Yes, we operate many extra cars on our regular trains for the accommodation of military traffic, and many of the military personnel also occupies space in the regu-
[fol. 1446] lar line cars, coaches and sleeping cars.

Q. Do you give them priority on seats and on berths?

A. No, sir, only the Fourth Service Command and the Army Service in Washington have requested it be done for definite and most essential travel. For that travel we have established what is known as Military Reservation Bureaus. It is manned by competent men, who look after nothing but that character of reservation, which is also an additional expense that I did not mention because I did not care to bring that out. As long as you ask the question, I am telling you.

Q. Let me make an example. Suppose there was a movement of twenty men in uniform with one party ticket military party ticket, moving from Montgomery to Washington, D. C. Would you give that party priority on reservations?

A. That party would be taken care of, yes, sir, either by the operation of an extra car, or in the regular equipment if it was available. If not available, we would furnish a coach.

Q. And they would be served ahead of civilian passengers, is that right?

A. Absolutely.

Q. I think that is proper, I am not questioning that. And they would travel at the so-called Government rates, which governs the movement of military passengers traveling under orders, is that right?

A. If they are traveling under orders, yes, sir.

[fol. 1447] Q. Yes, sir.

A. That is exactly what would be done. If they were on furlough, of course they would pay less.

Q. The so-called furlough travel, they travel on the same train that civilian passengers travel on, on your interstate and intrastate trains, do they not?

A. That is right.

Q. They pay 1¼ cents fare?

A. That is correct.

Q. Do you know how much of your passenger traffic that is composed of at the present time, between points that

have military establishments, and other points in intrastate commerce?

A. No, it is not separated, and it is not humanly possible to separate it because of the manpower situation in the accounting departments.

Q. You have no knowledge whatsoever as to how many of these people traveling in each one of these passenger coaches are traveling on the 1¼ fare, or you don't know how many civilian passengers are in that car, or you don't know whether there is a military party traveling under orders in that car either, do you?

A. Yes, we know what they are, but we don't know, when you get down to summing it up and dividing it as to the rate per mile on each class that you refer to, we don't know [fol. 1448] that, no.

Q. You talked here about the disabilities of the Southern in regard to the handling of troop movements, that is the extra space, and so on. What extra space, I want to know how much of that is caused by the so-called military movements, both Navy and Army, do you know?

A. I have tried to explain that in a general way in my testimony.

Mr. Oliver: We have an operating witness that I think can answer it.

Mr. Bruce: This man has talked about that, and he is the assistant general passenger agent. I want to know, and I don't want any interference.

Mr. Oliver: Now, just a moment. You are perfectly at liberty, and I am not trying to stop you from asking this witness anything that you want to as to anything he testified about on direct examination, and cross examine him about it, but when you go beyond that I have the right to object and I expect to.

Mr. Bruce: The witness has the privilege to say "I don't know".

By Mr. Bruce:

Q. Do you know?

A. I have told you, Mr. Bruce, what I have testified to, and the testimony speaks for itself.

Mr. Bruce: He said here, Mr. Counsel, because of the [fol. 1449] volume of military, as well as civilian travel, the railroads have been compelled not only to increase their

office forces, and so forth and so on. Therefore you made him subject to cross examination. Isn't he, Mr. Examiner?

Examiner Stiles: What is the question that you have pending?

Mr. Bruce: I have forgotten it.

(The record was read.)

The Witness: I do not. No, I can't tell you that.

By Mr. Bruce:

Q. You don't know how much increase in the general office force that has created, do you?

A. Yes, I can give you my own knowledge. It has increased about 50 per cent. In our Atlanta City ticket office it has increased three or four hundred per cent. We had six men in the ticket office and we now have twenty some odd. Birmingham is the same way, though not quite so heavy. In Cincinnati and Washington we have employed 85, and are employing more, young ladies, we are trying to make ticket agents out of them.

Q. Is that because of the military movement?

A. Largely so, yes, sir.

Q. I notice here you said, so far as coach travel is concerned, the lowest charge ever made by the railroads, materially increased the cost of service. Will you strike that? "While the monies expended for these improvements have provided additional comforts and conveniences to the travel-[fol. 1450] ing public at, so far as coach travel is concerned, the lowest charges ever made by the railroads, it has materially increased the cost of service". How does that apply in reference to the intrastate passengers, in Alabama, this increased cost you are talking about?

A. It would run to all character of improved equipment, if and when operated. For example, with our air condition equipment, when we air condition a coach, and we have 189 of them, it runs somewhere between six thousand and seventy-five hundred dollars to do that. That is an additional expense. And instead of getting 3.6 cents per mile, which we did in 1929, we are getting 1.65 cents today on interstate—I mean intrastate.

Q. Didn't you have air conditioned coaches in 1939 and 1940?

A. This runs about that same period.

Q. Wasn't that fare then 1.5 cents per mile?

A. Yes, sir, but conditions were materially different then than they are today.

Q. How is it different?

A. Mr. Bruce, I think you understand, you have asked the question several times, when we put in these experimental or subnormal rates, they were put in to meet the highway competition, largely the privately owned car. Today the privately owned car does not operate and the necessity is not there, we need the space for military personnel and for civilian transportation. That is the reason for it. The conditions are nowhere near the same as they [fol. 1451] were before the war.

Q. Because of that you are attempting to better your earnings, because of a condition that has come about through the lack of rubber and gasoline and whatnot, isn't that right?

A. No, we are attempting to put our rates on an equality with the interstate rates, so far as the State of Alabama is concerned.

Q. Supposing that the war ends—here is a theory, but it should be proper, due to the fact you are assistant traffic manager of a great railroad system,—suppose the war ended on January 1, this year. Would you ask the Commission to restore the 1.5 cent rate?

A. Mr. Bruce, you know you are asking a question that I think anybody in the world would love to know, and in any industry. I think Mr. Roosevelt would be delighted to know what he would do after the war ends, if he could. Certainly I don't know what we will do after the war, I don't know what the postwar conditions are going to be, but if they require reducing rates to get back our traffic, I think you will find the passenger traffic, or the passenger department would be just as alive then as they have been heretofore.

Q. If conditions after the war were substantially the same as they were in 1940 and 1939 and 1938, would you restore your rates then, your fares, to 1.5 cents?

A. I don't know, Mr. Bruce, but I do think it would be [fol. 1452] largely predicated upon the financial condition of the carriers. To start with, our equipment is getting a terrible pounding, and it is being used to the utmost. It is being worn down, and when the postwar conditions arrive, the chances are a great deal of it will have to be scrapped. There may be a new character of equipment developed, as

has been done in the past few years with the streamliners. Nobody knows. I wish I did know. If I did, I wouldn't have to be worrying about railroading, I don't think.

Q. How many local trains does the Southern operate in Alabama?

A. We have an operating witness that will give you that.

Q. What?

A. Our operating witness will give you that.

Q. You don't know about that then. Do you know anything about service on these local trains?

A. No, I haven't ridden them.

Q. Or the appointments on these trains?

A. I haven't ridden any of them.

Q. You are talking about them?

A. Yes, I am talking about them.

Q. You state that there is available in certain cars on certain trains maids, and hostesses and revolving seats and cups, and so forth and so on. Now, are these appliances available on the local trains that you operate in Alabama?

A. You didn't listen to my testimony. I told you that [fol. 1453] was on the streamliners, I didn't tell you anything about local trains.

Q. Don't you have it on other trains?

A. I am not familiar with what is on these local trains. We are going to have an operating witness that will tell you just what is on them.

Q. You don't know how many air conditioned cars are——

A. No doubt that information has been furnished to the Alabama Public Service Commission by Mr. Oliver, by letter.

Q. I want you to tell me.

A. Well, I don't remember. I have got a copy of it here that I can read to you if you would like to have me read it to you.

Q. Troop train movements in intrastate commerce in Alabama, due to land grant rates, would they or would they not have a lower rate than 1.65 cents per mile?

A. In coaches, yes, sir.

Q. In coaches?

A. Yes, in coaches. On the AGS Railroad it would be 50 per cent from the Georgia State line to the Mississippi-Alabama line.

Q. I don't suppose you know anything about terminal delays occasioned by troop trains?

A. Unfortunately I do.

Q. You do?

A. I have seen lots of it.

Q. Let's talk about terminal delays.

A. I have nothing to do with the terminals. You asked [fol. 1454] if I knew anything about the delays, and I do know that that has existed.

Q. In what way?

A. Trains backing up, many of them, in the terminal. We had it happen yesterday coming out of Atlanta. We were an hour and something late because of additional trains in the terminal.

Q. I presume you know about the empty car movement occasioned by military movements, is that right?

A. What do you mean by "empty train movements"?

Q. I am going to ask you a question.

A. If I can answer it, I will be glad to.

Q. I hope you can. If you had a train moving between Montgomery, Alabama, and Atlanta, Georgia, would you have a 100 per cent full train movement both ways, going and coming?

A. If I had a train from Montgomery to Atlanta, would I have it both ways?

Q. Yes, handling troops.

A. I don't know as I quite get your question.

Q. Would the return movement of these cars be empty?

A. They are liable to be empty, yes, sir. They are liable not to be sent to Atlanta, they are liable to be sent to Camp Blanding or Little Rock.

Q. In other words, your empty train movement has been considerably increased because of troop movements, isn't [fol. 1455] that right?

A. Yes, sir, a lot of extra trains are being operated.

Q. Would that be true of civilian passenger movements?

A. No, not to such a great extent. There might be some extra equipment operated that would have to come back in deadhead service, but generally it would filter back in regular trains.

Q. For handling of civilian passengers?

A. Yes.

Q. Do you know the amount of the land grant rates applicable on the land grant mileage of the Southern in Alabama?

A. On the Southern it is from Selma to Jackson, a distance of 145 miles. I testified to that.

Q. That is 50 per cent, isn't it?

A. 50 per cent all over the United States, where land grant is involved. There used to be some free land grants, but there is not any such thing any more.

Q. Now, about your tariffs, don't you file with the Alabama Commission and with other Commissions all over the system individual intrastate tariffs?

A. Yes, sir, we file with you, or with the Alabama Commission any one of our tariffs; we have no reason to hold them out from you.

Q. You do so in Georgia and in other States?

A. Yes, sir, I think I sent you a set of our Georgia tariffs the other day because you asked for them.

[fol. 1456] Q. Yes, I have them. On page 16 of your testimony, in the second paragraph thereof, of your statement, you make reference there to existing conditions that would be helpful to a ticket agent. What are those conditions, if it is not in regard to the tariffs?

A. The existing conditions, Mr. Bruce, refer largely to the manpower situation. You, of course, appreciate that on trains today there are many new men that are handling them, and they have a great deal of difficulty to start with in reading tariffs. And when tariffs are complicated and they have to have several different kinds of tariffs to determine what the intrastate and the interstate rate is, they become very greatly confused. You shake your head as if you didn't believe that, but if you sat where I sit, you would know it.

Q. I was a ticket agent myself for a great number of years. You have just stated you did not publish your intrastate rates in the same tariffs as you do your inter state rates?

A. In so far as Alabama is concerned, heretofore all of our fares have been in the interstate tariffs. At the present time our intrastate fares in Alabama are in interstate tariffs, but those interstate tariffs have been canceled so far as interstate commerce is concerned, and new interstate tariffs filed. So therefore they have the old tariff in effect which they must refer to in order to get the intra-

state rates. They go to the new tariff to get the interstate rates.

Q. You mean to say you use a mileage scale in estab-
[fol. 1457] lishing the amount of the fare at the present time?

A. No.

Q. The same mileage scale would apply?

A. No, I didn't make any such statement. Ortiginally the passenger fares were built on a mileage scale. From time to time as changes one way or the other, up or down, have occurred, as an expedient it has been done through the expedience of what is known as "conversion tables." Where the given fare published is such and such an amount, the new fare will be so and so. That has been carried on in the re-issue of all these new tariffs. We have put in the total fares on that same sort of basis, so that there might be and probably is some discrepancy as to the actual mileage structure.

Q. How would you quote a rate between Montgomery and any point east on your system in Alabama, where you would have a conflict with quoting the same rate in interstate commerce?

A. We would first go to the tariff in effect on the intrastate basis in Alabama.

Q. You couldn't have two rates together, interstate and intrastate, could you?

A. I didn't say they were together, Mr. Bruce. You are putting something in my statement that I didn't make. I said they were in separate tariffs all the way through.

Q. You said certain rates were published in your interstate tariff?

[fol. 1458] A. They were interstate tariffs.

Q. There are no intrastate rates in these tariffs?

A. If you will look in your file you will find Chairman Dugan's "A" tariff, with a tariff of probably five or six hundred pages in it. That tariff will be canceled in its entirety except for intrastate rates that have not been changed in certain States. When he wants an interstate fare from Montgomery to Washington, he goes to the new tariff. When he wants an interstate, interline fare, intrastate, he goes to the old tariff, so that he does have to have two tariffs.

Q. As a matter of fact you have three now, don't you?

A. It may be in some cases, yes.

Q. Then there would be no inconvenience so far as the agent is concerned, because he would have to look into either one, two or three tariffs anyway, that is to accommodate the passenger as to his particular need, isn't that right, he would have to look in one anyhow?

A. I think as a practical thing you will agree it would be much nicer, you know yourself, if you could pick up one tariff and find all of the fares, interstate and intrastate, it would tickle you to death.

Mr. Bruce: That is all I have with this witness.

Examiner Stiles: Is there any other cross examination?

Mr. Miller: I would like to ask a few questions.

By Mr. Miller:

Q. Will you turn to page 2 of your prepared state- [fol. 1459] ment?

A. Yes.

Q. You testified there that the experimental rates were put in to attract travel from other forms of transportation, particularly private automobiles and buses. Would you say that depression occurring after 1929 had anything to do with the lowering of those rates?

A. I would say it had all to do with it, because the people began to ride in their privately owned cars to save money.

Q. Do you think it is true that the increase in travel at the present time by private individuals is at least partially due to the fact that their income is increased, in addition to the fact that their private automobiles are not available?

A. I just don't know as to that, sir. I presume it does have some effect, but as to what amount it has, I wouldn't like to say.

Q. Now these 1.5 cent coach rates which were in effect from 1933 to 1937 were increased in November, 1937, to 2 cents per mile. Why was that increase made?

A. It was made with the thought that some of the costs that were being incurred, created in establishing certain new improvements might be at least partially over come. It however did not prove to be a fact. In fact it was just the reverse, and we went back to the subnormal fare of 1.5, the experimental fare.

[fol. 1460] Q. From the standpoint of revenue during those particular times, the 1.5 rate was advantageous?

A. Yes, yes, sir, it didn't pay anywhere near its way, so far as the value of the service was concerned, but it was better than what we were getting, in other words a little bit of a loaf is better than none at all.

Q. Do you know the approximate competitive level of the motor bus rates?

A. No, sir.

Q. In this territory?

A. No, sir, I have not looked into that.

Q. You don't know approximately even?

A. No, they have always been considerably lower than ours, anywhere from 25 to 50 per cent, depending on where they were going to. That used to be their structure; I don't know what it is today.

By the way, may I clarify one statement? You asked me if the depression had an effect, and I said yes, that had a lot to do with it. What I meant by that was that it was simply an added burden on the carriers because of the general automobile trend of traffic to automobiles. So far as the general depression is concerned, just whether that had anything to do with turning to automobiles, that is an unknown quantity.

Mr. Miller: That is all I have.

Examiner Stiles: Is there any redirect examination?

[fol. 1461] Mr. Oliver: I have just one or two questions, Mr. Examiner.

Redirect examination.

By Mr. Oliver:

Q. Mr. Bruce asked you a question with reference to your streamliner trains, several questions with respect to your streamliner trains, and the availability of these trains to intrastate passengers within Alabama. I am not certain whether you made it clear as to the opportunity of intrastate passengers to use these trains. You stated I believe that the train that you referred to as the "Southerner" makes stops at Anniston, Birmingham, and Tuscaloosa?

A. That is correct.

Q. You stated that Birmingham had assigned space. Is that true os Anniston, Alabama?

A. I think that they do, Mr. Oliver, but just what amount I don't know. And I think that is true at Tuscaloosa to some extent.

Q. Let's go to the train you referred to as the Tennessean, streamliner train that stops at these places, many other places, at Huntsville, Decatur, Sheffield, and Tuscumbia.

A. Five or six places, yes.

Q. Do you know whether or not there is assigned space on that train at all of these points where it stops?

A. I can't answer that definitely, Mr. Oliver. I imagine that they do have one or two seats assigned to them, but I can't say definitely.

[fol. 1462] Q. Suppose a passenger at Decatur, for instance, whether or not they have assigned space at Decatur, wanted to make a trip to Birmingham, or rather wanted to make a trip to Sheffield on the streamliner, could he, through advanced reservation, obtain passage on that train, or transportation on that train?

A. Oh, yes. What he would do, Mr. Oliver, is this, Chattanooga, Memphis, and the other cities on the route have the majority of the space in that train. As you know, we have our own long-distance telephones between all these points, and that agent at one of the points where the train stops, if he had one and it was sold, and he wanted another one, he would pick up the phone and ask Chattanooga to give him another space. That goes on all day long, all the way from Washington to New Orleans.

Q. So that the intrastate passenger would have an opportunity to use that train?

A. That's right.

Q. I am afraid the inference was left on the record that it was only the interstate passengers that had to make a trip to Decatur for instance who could get on that train. Wouldn't the interstate passenger have to do the same thing?

A. Yes.

Q. Wouldn't the interstate and intrastate passenger have to make exactly the same trip to board that train?

A. Yes, I think I made that clear, any passenger, intrastate or interstate would have to go to where it stopped to [fol. 1463] get on it.

Q. You referred to these questions relating primarily to these, what Mr. Bruce termed "De Luxe trains," by which he meant the streamliner and the air conditioned equipment on those trains. Those are not the only trains that you operate in Alabama, are they?

A. Oh, no, many through trains are operated into Alabama.

Q. Aren't other trains equipped with air conditioned cars also?

A. Yes, sir, yes, sir.

Q. Are those trains available to intrastate passengers in Alabama?

A. Yes, sir, every place that they stop.

Q. Do they get exactly the same service as the interstate passengers?

A. That is correct.

Mr. White: When you say "the same service" as the interstate train, do you mean they have an engine pulling some cars, that moves the cars from one station to another? Is that what you mean by using the term "same service"?

The Witness: I mean that they have the very same train that the interstate passengers are on. They have the advantage of riding that train.

Mr. White: I thought you said your local trains that carry passengers between all stations in Alabama furnished the same service as your interstate trains.

[fol. 1464] The Witness: I don't think you caught his question.

Mr. White: That is the way I understood it. Maybe I misunderstood it. Do you know if you have what is called a "mixed train service"?

The Witness: At some places, yes, sir.

Mr. White: Carrying passengers in Alabama?

The Witness: Yes, sir.

Mr. White: Freight trains with a coach attached on to the tail of it?

The Witness: Yes, sir, we have that very nearly in every State we operate in, and most other lines do too.

Mr. White: You have several lines in Alabama where that is the only passenger service that the Southern furnishes along that line, isn't it?

The Witnes: I think that is so.

Mr. White: All right.

The Witnes: I am not definite about that, I would prefer our operating witness to tell you about that.

By Mr. Oliver:

Q. Isn't it true that your interstate passengers ride on those same trains along with the intrastate passengers in Alabama?

A. Yes, sir, and the reason for it is very simple, you might say the smallness or the size of the traffic in the territory which they serve is so little and the earnings so limited you couldn't possibly hope to get operating expenses out of them.

[fol. 1465] Mr. Oliver: That is all I have.

Examiner Stiles: You are excused.

The Witness: Thank you, sir.

(Witness excused.)

Examiner Stiles: Gentlemen, with reference to the matter of intervention, this is a proceeding which falls within Rule 73 of the Rules of Practice. No petition need be filed, petition of intervention, if no affirmative relief is sought, if there is a full disclosure of the identity of the person or persons in whose behalf the appearance is to be entered, if the interest of such person in the proceeding, and the position intended to be taken are stated clearly, and if the contentions will be reasonably pertinent to the issues already presented, and any right to broaden them unduly is disclaimed, I will ask you——

Mr. Burkett: In other words, my appearance is as our interests may appear, which is purely and simply as the interests of these people who are organizations of a public nature, who are interested in what is involved in this case, as to the increased rates to the public, may develop.

Examiner Stiles: Well, do you appear in opposition to the petition of the carriers?

Mr. Burkett: We are appearing in support of the defendants, is that is what you mean, in other words, the Public Service Commission.

[fol. 1466] Examiner Stiles: You oppose the rate increase?

Mr. Burkett: Oh, yes, sir, we did.

Examiner Stiles: If the States of Kentucky and Georgia would have their representatives state these conditions on

the record, it will not be necessary for you to file a written petition.

Mr. McDonald: I am sorry, we didn't hear the conditions that you laid down. Would it be too much to ask you to repeat them?

Examiner Stiles: If no affirmative relief is sought, if there is a full disclosure of the identify of the person or persons in whose behalf the appearance is to be entered, if the interests of such person in the proceeding and the position intended to be taken are stated clearly, and if the contentions will be reasonably pertinent to the issues already presented, and any right to broaden them unduly is disclaimed. That would require that you state — of course you are seeking no affirmative relief here, and it would require that you state your attitude towards the petition of the carriers. You are opposing that petition, are you?

Mr. McDonald: We are neither opposing nor supporting. We have a like petition pending before the Georgia Public Service Commission. We are here appearing for the Georgia Public Service Commission as our interests may appear, to look and listen and learn, and we so far have not taken [fol. 1467] any position in the matter since we have not decided our own pending petition. It is necessary in Georgia that we pass on the petition. We do not have suspension power.

Examiner Stiles: And the State of Kentucky.

Mr. Marks: Mr. Examiner, I would like to confer further with Mr. McCarthy during the noon hour. If we file our petition it will be in accordance with the Rules of Practice.

Examiner Stiles: I was saying if you come within these conditions it will not be necessary for you to file a written petition.

Mr. Marks: That is if we are not taking an affirmative position you mean?

Examiner Stiles: If you come within the conditions which I read from Rule 73 it will not be necessary for you to file a written petition of intervention.

Mr. Marks: I see.

Mr. Burkett: Mr. Examiner, it was my idea at the start that we would have to file, under that rule, a petition of intervention, a written petition, and we so filed it with the Commission, and this is the letter I got back from Sec-

retary, Bartel, stating that we did not. My petition has been filed with the Commission, and I think they have fifteen copies of it.

Examiner Stiles: Off the record.

(Discussion had off the record.)

[fol. 1468] Examiner Stiles: We will recess until 2 o'clock

(At 12:40 o'clock, p. m., a recess was taken until 2 o'clock, p. m.)

Afternoon Session

The hearing was resumed pursuant to recess.

2:00 P. M.

Examiner Stiles: The carriers will call their next witness.

Mr. Oliver: Mr. Examiner, before calling the next witness I would like to offer in evidence a certified copy of the order of the Alabama Public Service Commission in its Docket 8618, in which the Alabama Commission had under consideration the fares and charges which are involved in this proceeding.

Examiner Stiles: Let that be identified as Exhibit No. 4. And the Exhibit is received in evidence.

(Exhibit No. 4, by Counsel, received in evidence.)

Mr. Reynolds: I will call Mr. Stewart, please.

T. J. Stewart was sworn and testified as follows:

Direct examination.

By Mr. Reynolds:

Q. Mr. Stewart, will you please state for the record your name, address, and occupation?

A. T. J. Stewart, General Passenger Agent, Central of Georgia Railway, Savannah, Georgia.

[fol. 1469] Q. How long have you been a General Passenger Agent?

A. Four years.

Q. Prior to that time what were you?

A. Prior to that time I was Assistant General Passenger Agent, Division Passenger Agent, District Passenger Agent, Traveling Passenger Agent, and Baggage and Claim Agent, and Secretary.

Q. Will you please describe briefly the location of the lines of the Central of Georgia Railway in the State of Alabama?

A. We operate in the State of Alabama, from Phenix City to Birmingham, from Eufaula to Montgomery, from Roanoke to Opelika, and Eufaula to Ozark, Alabama.

Q. Have you an Exhibit comparing the cost to a coach passenger of traveling intrastate in Alabama with the cost to a coach passenger of traveling approximately the same distance between a point in Alabama and a point in an adjoining State?

A. I have.

Q. Will you please identify that Exhibit?

A. Exhibit No. 5.

Mr. Reynolds: May that be identified as Exhibit No. 5, Mr. Examiner?

Examiner Stiles: Let it be marked Exhibit No. 5.

(Exhibit No. 5, witness Stewart, marked for identification.)

By Mr. Reynolds:

Q. Go ahead, Mr. Stewart, and explain that briefly. I think it is almost self-explanatory.

The Witness: It is explanatory.

[fol. 1470] Mr. Bruce: Before the witness proceeds with the explanation of the Exhibit, on the face of it, I make the same objection that we made as to Exhibit No. 2.

Examiner Stiles: Let the record show the objection. The ruling of course is the same.

Mr. Bruce: That the Exhibit is merely a theory of what might happen. The Exhibit does not explain that it has happened, the Exhibit does not state what amount they have been deprived of, excepting in theory. It does not explain how many passengers have traveled under the so-called fares, and therefore it is immaterial and merely a theory that interstate commerce fares could be defeated by a combination of locals.

Mr. Reynolds: You have either got the wrong Exhibit or something. Have you the one marked "Exhibit No. 1"?

Mr. Bruce: No, I am making the same objection.

Mr. Reynolds: It doesn't purport to show anything about the defeat of the through published interstate fare. What

it purports to show is that the cost to an intrastate passenger is less than the cost to an interstate coach passenger, when both travel approximately the same distance.

Mr. Bruce: I am going to ask Counsel one question, and if he answers that question correctly, that is in line with the way I think he should answer it, I am going to withdraw my objection. Do you intend to use these comparisons to [fol. 1471] show that you can defeat interstate commerce fares?

Mr. Reynolds: We will have other Exhibits to show that.

Mr. Bruce: This doesn't purport to show that?

Mr. Reynolds: No.

Mr. Bruce: I withdraw my objection to this Exhibit then.

By Mr. Reynolds:

Q. Go ahead, Mr. Stewart.

A. Take from Birmingham to Columbus, a distance of 151.4 miles——

Q. Wait a minute. Which illustration is that?

A. That is the fourth from the top.

Q. Go ahead.

A. Birmingham to Columbus, a distance of 151.4 miles, fare $3.34. From Birmingham to Phenix City, Alabama, a distance of 149.3 miles, the coach fare is $2.50, a differential of 84 cents between two fares with only a 2:1 difference in mileage.

Examiner Stiles: Why didn't you put the States in there after these cities?

The Witness: Well, I am sorry I didn't, Mr. Examiner. I can do that very easily during the course of the afternoon.

Mr. Bruce: That shows the interstate fare is 16 cents less than the intrastate fare, doesn't it?

The Witness: No, sir, it shows the Birmingham to Columbus fare is $3.34.

Mr. Bruce: That is interstate, isn't it?

The Witness: That is interstate.

Examiner Stiles: In each instance, are the first two [fol. 1472] points of a group within Alabama?

The Witness: No, Birmingham to Opelika, that is intrastate, and Columbus to Sterrett is interstate.

Examiner Stiles: Yes. In each instance, the first two points on the group are points within Alabama.

The Witness: That is correct, with the exception of the seventh down there, Columbus to Union Springs, that is interstate, Columbus, Georgia, to Union Springs, Alabama, and Columbus to Montgomery.

Examiner Stiles: To Union Springs?

The Witness: Columbus to Union Springs, that is Columbus, Georgia, and Union Springs, Alabama.

By Mr. Reynolds:

Q. Mr. Stewart, isn't it a fact that Columbus, Georgia, is the only Georgia point you used, and all of the other points on the Exhibit are in Alabama?

A. That is correct, yes.

Mr. Reynolds: I think, with that in mind, Mr. Examiner, you will understand it. Columbus and Cuthbert are the only two.

The Witness: That is right.

Mr. Reynolds: Cuthbert and Columbus are the only Georgia points; all of the other points are in Alabama.

Examiner Stiles: Thank you.

By Mr. Reynolds:

Q. All right, Mr. Stewart, go ahead.

A. For instance, a passenger can buy from Birmingham [fol. 1473] to Phenix City and pay the conductor a fare from Phenix City into Columbus, Georgia, an intrastate fare of $2.61, which is a savings of 73 cents by buying an intrastate ticket and rebuying.

From Birmingham to Opelika, a distance of 122.7 miles, and Columbus to Sterrett, a distance of 123.9 miles, or a difference of 1.2 miles, the coach fare, Birmingham to Opelika is $2.05, and Columbus to Sterrett, interstate, is $2.75, a difference of 70 cents between the intrastate and the interstate fare.

Q. Now, has the Central of Georgia Railway an interstate route between points in Alabama?

A. Yes, we have.

Q. Have you an Exhibit showing how the coach fare via your interstate route compares with the coach fare between the same points via an intrastate route?

A. I have.

Q. What Exhibit is that?

A. My Exhibit No. 2.

Mr. Reynolds: May that be marked for identification as Exhibit No. 6, Mr. Examiner.

Examiner Stiles: Let it be so marked.

(Exhibit No. 6, witness Stewart, marked for identification.)

By Mr. Reynolds:

Q. Will you please proceed to explain that Exhibit?

A. Opelika, Alabama, to Troy, Alabama, a passenger [fol. 1474] that travels via the Central of Georgia Railway would naturally have to go interstate via the Central of Georgia Railway 113.2 miles, with a coach fare of 2.53. An intrastate passenger in Alabama, going between the same two points, a distance of 117.4 miles, 4.2 miles different, the coach fare is $1.95, with a saving of 58 cents.

Q. In that instance your interstate route is the shorter of the two routes?

A. That is correct.

Q. And yet the passenger pays more money via the interstate route?

A. That is right.

Q. What is your next Exhibit?

A. It is practically the same, Mr. Reynolds, as my Exhibit No. 2.

Mr. Oliver: Referred to as Exhibit No. 6.

By Mr. Reynolds:

Q. Exhibit No. 2, introduced by the witness Aiken?

A. No, my Exhibit No. 2, the Examiner's Exhibit No. 6 I think it is.

Mr. Reynolds: May that be marked for identification as Exhibit No. 7?

Examiner Stiles: Let it be so marked.

(Exhibit No. 7, witness Stewart, marked for identification.)

By Mr. Reynolds:

Q. Explain Exhibit No. 7 please, Mr. Stewart.

[fol. 1475] A. From Birmingham to Invernness by the Central of Georgia interstate is 215.1 miles, and the coach fare is $4.77. Birmingham to Invernness via the L&N, Montgomery, ACL, Troy, Central of Georgia, a distance of

170.2 miles, the coach fare is $2.94, a difference in fare of $1.83.

Birmingham to Fort Mitchell, which is a Government reservation where we have a lot of troop movements out of Fort Mitchell, Alabama, via the Central of Georgia interstate is $161.5 miles, and the fare is $3.60. Via the Central of Georgia, Montgomery, L&N, the fare is $3.14, a difference of 21.7 in miles, and a difference of 46 cents in the interstate fare.

Q. That is another instance where your interstate route is shorter than the intrastate route, and yet the coach fare over your interstate route is more?

A. Is more.

Q. That is higher?

A. Yes, sir.

Q. Higher than the fare via the intrastate route?

A. That is right, yes, sir.

Q. Are those all of the Exhibits you have?

A. That is all I have.

Q. Does the Central of Georgia Railway make any special effort to accommodate intrastate passengers traveling between points in Alabama, and, if so, please explain what they are.

[fol. 1476] A. We certainly do, Mr. Reynolds. We have the Seminole Limited, running as an interstate train from Chicago to Jacksonville, Florida. There is not possibly a day at these present times that we do not southbound put on one or two extra coaches in Birmingham for the passengers boarding the train at Birmingham. Trains 1 and 2 are local trains between Birmingham and Macon, Georgia, and there is not a day that we do not operate extra coaches on that train from Birmingham to Columbus, where two coaches are cut off that train every day, and put on train No. 1 going back into Birmingham that afternoon, leaving Columbus at 4:05 P. M.

And there are times when those two coaches go out of Columbus, Georgia, practically empty, but are loaded after they get across the river at points between Phenix City and Birmingham by intrastate passengers.

Q. Do I understand now correctly that the two trains that you referred to operate over your line between Birmingham and Columbus, Georgia?

A. That is correct.

Q. And you put on extra coaches at Birmingham and at Columbus?

A. That is correct.

Q. To handle Alabama intrastate passengers?

A. That is correct. These cars do not go off our line. They are what you might say shuttle cars between Columbus and Birmingham, Alabama.

[fol. 1477] Q. Are those cars air conditioned?

A. They are air conditioned, yes, sir.

Q. When did you get to Montgomery, Mr. Stewart?

A. I came in here Saturday afternoon.

Q. How did you come?

A. West Point 31.

Q. How did you come?

A. By Opelika.

Q. Did you travel on West Point 31 from Opelika to Montgomery?

A. That is correct.

Q. Did you travel in the day coach?

A. I did.

Q. Were passengers standing up in the day coach?

A. They were not.

Q. You had a seat, did you?

A. I had two.

Q. And there was plenty of room for other people to sit down?

A. They could have put 50 more people on there.

Examiner Stiles: Let's see if I understand your Exhibit No. 7. As I read that over, this first route that you show via the Central of Georgia, you would leave Birmingham at 4:50 p. m., let us say on Monday.

The Witness: That is right.

Examiner Stiles: And you would arrive at Invernness at 8:50 next morning?

[fol. 1478] The Witness: That is correct.

Examiner Stiles: And the fare is $4.77?

The Witness: That is right.

Examiner Stiles: Now, taking the other route, you would leave Birmingham at 8:35 at night?

The Witness: That is right.

Examiner Stiles: On Monday?

The Witness: That is right.

Examiner Stiles: And you would get to Invernness at 5:40 the next night?

The Witness: That is right.

Examiner Stiles: In other words, nearly a day in travel?

The Witness: That is right.

Examiner Stiles: For that, the fare is $2.94?

The Witness: That is right.

Examiner Stiles: You would not say the service was comparable?

The Witness: No.

Examiner Stiles: You would not say the value of the service was comparable, would you?

The Witness: That is right, I would not say it is.

Mr. White: And in taking passage over the L&N and ACL to Troy, and Central of Georgia between Birmingham and Invernness, you would make two changes, would you not?

The Witness: From Birmingham to Invernness, you [fol. 1479] would make a change, Mr. White, at Montgomery and at Troy, that is correct.

Mr. Bruce: It would be a three-line haul, would it not?

The Witness: Take that Fort Mitchell example down there, next, Birmingham to Fort Mitchell, if we should be called upon to handle passengers between those points there, which we don't know when we will be called upon to move them out of there, nor to what points they are going to move, but that of course would be a special train service, and naturally the route would be followed, being the short line route between Fort Mitchell and Birmingham.

By Mr. Reynolds:

Q. Now, do both interstate and intrastate passengers ride on all of the trains that the Central of Georgia operates between points in Alabama?

A. Interstate trains, yes. We have some intrastate trains in Alabama.

Q. And on those intrastate trains do both interstate and intrastate passengers ride?

A. They do.

Q. In coaches?

A. They do.

Q. Now, when you refer to intrastate trains, do you mean a train that starts in Alabama and stops in Alabama?

[fol. 1480] A. That is what I mean.

Q. Now, you have had a good deal of experience in passenger traffic matters. Do you know of any reason why the

coach fares in Alabama should be less than the coach fares between points in Alabama and points in adjoining States?

A. I do not. I cannot understand why a fellow living over across the river in Columbus, Georgia, has got to pay 84 cents because he lives across the river, more than he has if he lived at Phenix City, a distance of 2.1 miles, why he should pay 84 cents for that.

Mr. Reynolds: Mr. Examiner, I ask that Exhibits 5 to 7, inclusive, be received in evidence, please.

Examiner Stiles: Exhibits 5 to 7 inclusive are received in evidence.

(Exhibits Nos. 5 to 7, inclusive, witness Stewart, received in evidence.)

Examiner Stiles: Is that all on direct?

Mr. Reynolds: Yes, that is all.

Examiner Stiles: You may cross examine.

Cross examination.

By Mr. Bruce:

Q. Mr. Stewart, have you ever had any complaint from a passenger living in Columbus, Georgia, with reference to the rate or the fare rather from Birmingham to Opelika?

A. I have not personally, but our——

[fol. 1481] Q. I want to know if you have.

A. I said no.

Q. Well, all right, say that.

A. I did say that, sir.

Q. Have you ever had any complaint from a passenger living in Columbus about the fares between Birmingham and Sylacauga?

A. No, sir.

Q. Would that apply to every point you show on your Exhibit No. 5?

A. So far as I am personally concerned, it does, yes.

Q. Now, with reference to your Exhibit No. 6, does the same thing apply to that?

A. So far as I am personally concerned, I have not had anything personally, no.

Q. On the first example that you make from Birmingham to Invernness, that is an interstate movement, is it not?

A. By our railroad it is; by the L&N to Montgomery, ACL to Troy, and Central of Georgia beyond it is not, it would be an intrastate movement.

Q. Troy is on a branch line of the Central of Georgia, is it not?

A. Well, you might call it a branch line. It is on our line from Columbus to Andalusia.

Q. Would you call it a main line?

A. No, we don't call it a main line.

[fol. 1482] Q. What class of equipment do you operate between Troy and Columbus?

A. Steel coaches.

Q. What?

A. Steel coaches, non-air conditioned.

Q. Non-air conditioned?

A. Yes.

Q. And that would be intrastate commerce?

A. I beg your pardon.

Q. Did you say that would be intrastate commerce?

A. That is interstate from Birmingham to Inverness by the Central of Georgia Railway all the way.

Q. To travel over that route you would have to come from Birmingham to——

A. Columbus, Georgia.

Q. And then he would have another change. Name that change.

A. Columbus, Georgia.

Q. Do you have very many people that travel over that route?

A. I don't know of any number of people that travel over the route, no.

Q. Your schedule would be what, what time would you leave Birmingham, using that route?

A. 4:50 in the afternoon.

Q. And you would get into the destination there, at Inverness, at 8:50 next morning?

[fol. 1483] A. That is right.

Q. Do you know of any better route than that to use, where the time consumed would be much less?

A. To get to those two points, if you are going over from Birmingham and want to use our train, or a train, you have to use either that service or this service, to get there. There is not very much difference in either one of the services.

Q. Birmingham to Fort Mitchell, would the same apply?

A. Birmingham to Fort Mitchell is a little different. Like I say, that is a Government reservation, and paratroops are quartered at Fort Mitchell, and special train movements go out of Fort Mitchell.

Q. That would be a local movement over your line also, would it not?

A. That would be local so far as the Central of Georgia is concerned from Fort Mitchell to Birmingham; yes, sir.

Q. What kind of equipment do you use on that train?

A. At Columbus we use air conditioned——

Q. Columbus?

A. Columbus to Birmingham is air conditioned. From Fort Mitchell to Columbus is non-air conditioned, but steel cars.

Q. You have one train a day?

A. One train going down and one back a day.

Q. The so-called local trains you referred to, and that your Counsel asked you about in intrastate commerce in [fol. 1484] Alabama, where do they run from?

A. Train No. 1 leaves Macon, Georgia, and goes to Birmingham.

Q. Macon, Georgia?

A. Macon, Georgia.

Q. That is not an intrastate movement?

A. You mean intrastate trains?

Q. Yes.

A. We have one from Eufaula to Ozark, and one from Roanoke to Opelika.

Q. The one from Eufaula to Ozark, what kind of train is that?

A. A mixed train.

Q. A freight train with a passenger car on it?

A. That is correct.

Q. Does it have a regular schedule?

A. Tri-weekly, yes.

Q. Do you maintain that schedule?

A. We do.

Q. That is you leave on time, but do you always arrive at the destination or terminal?

A. When you say "maintain schedule," we figure that the schedule is maintained more than it is lost down on that line down there.

Q. In other words, it is just a passenger car that you have on the freight train, that whenever your freight train gets to the destination, the passenger gets there, is that right?

[fol. 1485] A. That's right, he couldn't get there before.

Q. Does the same apply with reference to your other local train, is that a mixed train also?

A. Yes, mixed service.

Q. And you have what class of equipment on that train?

A. We have a steel coach.

Q. Air conditioned?

A. No, sir.

Q. Revolving seats?

A. No, sir.

Q. Do you have a maid on that train?

A. No, sir. Have you been over there?

Q. Or hostess?

A. I think that is irrelevant to the question, Mr. Chairman. On a mixed train you never heard of a maid or hostess, on a mixed freight train.

Q. Do you charge the same price on that, that is the same fare on that train as you do on the Seminole?

A. We do.

Q. Do you have a hostess on the Seminole?

A. We do not.

Q. And what have you got on the Seminole in the line of extra protection for the passenger?

A. Air conditioned reclining seat cars, and high back seat cars, standard pullman sleeping cars, and observation cars.

[fol. 1486] Q. Between what points in Alabama does the Seminole operate?

A. Phoenix City and Birmingham.

Q. How many stops do you have on that line?

A. You have it in your record. We gave it to you. Do you want me to read them off?

Q. Yes, sure.

A. Flags at——

Q. Flag, is it?

A. Flag at Smith's.

Q. What does a flag mean, what do you stop there for, what kind of passenger?

A. Flag means if you buy a ticket the agent can flag a train that stops there.

Q. To any destination?

A. Yes, sir, if he has a ticket to sell.

Q. What other stops do you have?

A. Flag at Bleecker, flag at Salem, stop at Opelika, stop at Gold Ridge, stop at Waverly, stop at Camp Hill, stop at North Dadeville, flag at Jackson's Gap, stop at Alexander City, flag at Kellyton, stop at Goodwater, flag at Hollins, stop at Sylacauga, stop at Childersburg, stop at Vincent, flag at Sterrett, flag at Vandiver, stop at Leeds, stop at Birmingham.

Q. On this flag at Salem, would you stop to pick up a passenger going to Waverly?

A. Yes, sir.

[fol. 1487] Q. Are the cars on the Seminole reserved, do they have assigned seats?

A. They do not.

Q. Do you sell them on reservation?

A. No, sir, they do not.

Q. How many miles does that train operate in the State of Alabama?

A. 149.1.

Q. In other words, it is a very small portion of your system in Alabama, is that right?

A. Yes, I would say that.

Q. The Central of Georgia Railroad is a railroad that comes into Alabama with a series of branches or terminals, isn't that right? In other words, you have a terminal at Montgomery, you have a terminal at Birmingham, and you have one at Andalusia, one at Ozark, one at——

A. Roanoke.

Q. At what?

A. Roanoke.

Q. Roanoke?

A. Yes.

Q. You connect with other lines from these points, is that right, or do you have connections out of these points?

A. Yes, we have connections.

Q. So you really have very little mileage in the State of [fol. 1488] Alabama, do you not?

A. Yes, we have quite a good deal of mileage in the State of Alabama. We run from Eufaula into Montgomery with air conditioned trains from Smithville, Georgia.

Mr. Reynolds: How far is that?

The Witness: Smithville, I don't recall now, but about 56 miles I think, something like that.

By Mr. Bruce:

Q. 66 miles?

A. 56, I think.

Q. And that would be——

A. I have forgotten the distance.

Q. And that would be enroute to what point, first point in interstate commerce?

A. Eufaula is the first point. Next would be Lugo, Batesville, Comer, Midway, Three Notch, Union Springs, Thompson, Fitzpatrick, Mitchell, Pike Road, Perry's Mill, Barachias, and Montgomery.

Q. What is the mileage of that?

A. I have forgotten the mileage on that, I haven't got it with me. Give me the guide and I will tell you. It is a little less than 80 miles.

Q. A little less than 80 miles?

A. I would say 80 miles.

Mr. Reynolds: What branch is that, Mr. Stewart?

The Witness: That is from Smithville to Montgomery.

[fol. 1489] By Mr. Bruce:

Q. If you were traveling from Birmingham to Troy, you would use the route that you have stated; that is necessary if you were a passenger?

A. If I had to get to Troy I would use one of those routes that I put down there, yes, if I was going by train.

Q. If you had available other routes——

A. If I was going by train I would.

Q. —you would not?

A. If I had to get Troy by train I would, yes, go either one or the other of those routes.

Mr. Bruce: That is all.

Mr. Reynolds: Just a second. I have one or two questions on redirect examination.

Redirect examination.

By Mr. Reynolds:

Q. These mixed trains that you referred to, do they handle both interstate and intrastate passengers?

A. They do.

Q. And the interstate passenger pays the 2.2 cents a mile?

A. That is correct.

Q. Now, the Seminole going northbound, when it gets to Birmingham, do you deliver it to any connecting railroad there?

A. We deliver it to the Illinois Central Railroad.

Q. And it goes on through to Chicago?

A. That is correct.

[fol. 1490] Q. Do you know whether or not on account of the lower intrastate coach fares in Alabama, passengers actually defeat the through published interstate fares by buying at the intrastate rate tickets for the portion of their journey between points in Alabama?

Mr. Bruce: I object to the question. It is a matter of theory unless he had his witness name the passengers, his residence, where he has traveled to and from.

Mr. Reynolds: I asked him if he knew.

The Witness: Not personally, but the condition exists, and it is there, and we do know it is being done.

Mr. Reynolds: That is all.

Recross-examination.

By Mr. Bruce:

Q. I have a question now. Do you know of any particular instance where that has been done, Mr. Stewart?

A. No.

Q. Has any one reported to you that it has been done, any one that is working for the Central of Georgia?

A. No.

Q. So that you are staring that it can be done, just the same as some one can commit burglary?

A. Living in Columbus, Georgia, would you ride across the river to save 84 cents if you needed 84 cents? I would.

Q. But you don't know of any one that did that?

A. No, sir. As it stands, from a common sense stand-[fol. 1491] point, they are going to do it if they know about it.

Mr. Reynolds: The taxi fare is less than 84 cents, isn't it?

The Witness: Absolutely.

Examiner Stiles: Is there anything further?

Mr. Reynolds: That is all I have.

Mr. Bruce: No, sir.
Examiner Stiles: You are excused.

(Witness excused.)

Mr. Reynolds: I will call Mr. Makinson.

J. D. Makinson was sworn and testified as follows:

Direct examination.

By Mr. Reynolds:

Q. Have you any Exhibits, Mr. Makinson?
A. I have one, Mr. Reynolds.
Q. Has that been distributed?
A. No.
Q. Will you please do so?
A. Yes.
Q. Please state your name?
A. J. D. Makinson, General Passenger Agent, Seaboard Air Line Railway, Norfolk, Virginia.
Q. Outline briefly your experience in the Traffic Department?
A. I have been with the Traffic Department, Passenger Traffic Department of the Seaboard for over 25 years, [fol. 1492] formerly Assistant General Passenger Agent, Chief Clerk, Chief Rate Clerk. I also handled train service in the general office.
Q. Describe the location of the lines of the Seaboard Air Line Railway in Alabama?
A. The Seaboard has two lines, one extending east from Birmingham towards Atlanta, 93.5 miles in the State of Alabama, and another line extending from Montgomery eastward towards Savannah, Georgia, 73.9 miles in Alabama. We have a total of 167.4 miles of passenger mileage in Alabama.
Q. Have you an Exhibit showing examples of how interstate coach passengers traveling to or from points in Alabama can defeat the through published interstate coach fares by purchasing tickets at the fare of 1.65 cents per mile for the portion of their journey within Alabama?
A. I have. And before I present this statement I would like to mention that the matter of defeating the through

published fares was one of the items on a docket of our passenger representatives staff at a meeting last spring, and the reports of our ticket agents and representatives at that meeting indicated that this combination was being done, combining of fares was being done by the passenger himself. We had told them time and again that it was not permissible to knowingly connive with the passenger.

Q. You had told your agents?

A. We had told various representatives by word of mouth [fol. 1493] to tell the agents that it was not proper, but it did not have the desired effect. We knew it was still being done because of my own observation of refund claims and baggage claims, which clearly indicated that it was being done. People would send tickets in for redemption, and I made a sort of a check of it once in a while in the office.

We felt so strongly about it that on March 9, 1943, we issued a mimeographed letter to our principal tickets agents, again reminding them of the fact that it was not lawful nor permissible to assist the passenger in defeating the through fares.

I have this three page statement that I would like to offer.

Mr. Reynolds: May that be marked for identification as Exhibit No. 8?

Examiner Stiles: Let it be so marked.

(Exhibit No. 8, witness Makinson, marked for identification.)

By Mr. Reynolds:

Q. Please explain that briefly.

A. Sheet one shows the manner in which it is possible for the lower basis of fares intrastate in Alabama to be used by the passenger to defeat the through passage, I mean through published interstate fare. A passenger starting at Borden Springs, Alabama, going to Memphis, Tennessee, his through interstate fare at 2.2 cents per mile over the Seaboard to Birmingham and the Frisco Lines is $7.63. [fol. 1494] The passenger can buy from Borden Springs to Birmingham at the intrastate coach fare of $1.55.

Q. $1.65?

A. $1.55 and get off,—he has to get off anyhow—and buy another ticket from Birmingham to Memphis for $5.61, representing a saving of 47 cents that the passenger can make, if he desires.

Sheet No. 2 shows the coach fares between two points in Alabama, one over an intrastate route and one over an interstate route between Piedmont, Alabama, and Hurtsboro, Alabama. Via the interstate route through Atlanta, Georgia, the passenger now pays $5.21. Over the intrastate route through Birmingham he would pay $4.05, a difference of $1.16, and only one mile difference in the distance.

Sheet No. 3 indicates how two passengers leaving Birmingham, Alabama, on the same tr-in, occupying seats maybe beside each other, will pay different rates per mile for that portion of the trip within the State of Alabama. The interstate passenger from Birmingham to Cedartown, Georgia, pays an interstate fare of $2.35.

A passenger on the same train from Birmingham to Borden Springs, Alabama, pays $1.55. The interstate passenger pays $2.02 for that portion of his journey between Birmingham and Borden Springs, Alabama, while the intrastate passenger pays $1.55 for the same distance, a dif- [fol. 1495] ference of 47 cents in favor of the intrastate passenger.

Q. Borden Springs is intermediate to Cedartown, isn't it?

A. It is.

Q. Via your route from Birmingham to Cedartown?

A. That is correct.

Q. On the trains that you operate, that the Seaboard Air Line operates in Alabama, do you furnish the interstate and the intrastate passenger with the same services and conveniences?

A. Yes, we do. We have out of Montgomery eastward one train daily in each direction, gas-electric operated, all steel equipment, coaches only, but it is not air conditioned. The territory is rather sparsely settled, and it would not support a greater service.

Q. Does that train handle both interstate and intrastate passengers?

A. It operates between Montgomery and Americus, Georgia, and handles both interstate and intrastate passengers.

The Seaboard has no passenger service in Alabama consisting of mixed service. It is all straight passenger trains.

Now, eastward from Birmingham we run two trains in each direction daily. These trains carry through coach and pullman equipment, and dining cars, through Atlanta to Washington, D. C. All of the regular assigned equipment

is air conditioned, with individual seats. These two trains together stop at points in the State of Alabama, an average [fol. 1496] of 8 miles apart, in other words, the distance is 93½ miles in Alabama, and there are twelve stops east of Birmingham before you hit the State line. Identical equipment is furnished on both trains, for both interstate and intrastate passengers.

Q. Have you made any investigation to determine whether or not a passenger traveling on your trains into and out of Birmingham has to stand up?

A. Well, I made a study of the trains leaving Birmingham. For the month of April these two trains each had an average daily seating capacity for coaches of 182 the average load leaving Birmingham on one train in coaches of 122, and on the other train 154. Now, there were certain days in there that the capacity was exceeded, and some passengers had to stand up, but on the average we had more than sufficient seating capacity, and that is what we have to go by. We cannot cover the flood, any more than the Alabama River can be kept within its banks all the time.

Q. The instances in which passengers have to stand, were they many or few?

A. The P&B car, which is club cars, also air conditioned, has a capacity of 50 passengers. The club car on train No. 6 leaves in the morning, and exceeded capacity only one day. No. 6, the morning train has, with white passengers, exceeded the capacity on four days in April.

Q. Four out of thirty?

[fol. 1497] A. Four out of thirty. Train No. 10 is a little heavier patronized train. The club car was exceeded on the noon train six times, the white coaches, two of them, the capacity was exceeded eight times.

Q. Now, those persons who stood up, they may have been interstate or intrastate passengers?

A. I made no separation. That was leaving Birmingham, from actual conductors reports. I might state that when that condition exists, and there is room in the pullman car on that train, it is our practice and instructions to seat the passengers in the pullman cars, until seats in the coaches become available, but not to the exclusion of pullman passengers.

Q. Do I understand then that you do not know whether passengers actually stood on any of the days you mentioned, you just stating that there were more coach pas-

sengers than you had seats in the coaches for, is that right?

A. I know there were some days that they stood, there is no doubt about that.

Q. Now, Mr. Makinson, has the Seaboard Air Line Railway improved its equipment any in recent years?

A. Going back to this other thing a minute, if we knew ahead of time when furloughed soldiers were going home, if the Army could tell us, we could arrange our extra equipment in a better manner, but very often we will have 50 or a hundred or two hundred or six hundred furloughed [fol. 1498] boys come to us with no prior notice. That is one of our difficulties.

Q. All right.

A. As to the improved service, the Seaboard had in effect an improved coach program at the beginning of the war, which more or less stopped it. Up to that time, however, we had air conditioned ownership cars on the Seaboard, 92 air conditioned coaches, including colored and white coaches, out of a total coach ownership at the present time of 168. Of these air conditioned coaches we have assigned I think a fair share for our service to and from Birmingham, in other words, for the State of Alabama. I think in proportion to our mileage that we are giving the State of Alabama as good as we have on the balance of the system.

Q. Does your line handle military traffic?

A. We handle a large amount of military traffic.

Q. Will you just state briefly some of the unusual circumstances encountered in the handling of military traffic?

A. All of the military revenue is not net by any means. I have occasion to look over every morning when I am home the military train reports which are put on my desk. Extra sections are operated sometimes for two, three, four, and five cars. An engine has a capacity of so many cars to make its schedule. When we run over that, we have to split the train in sections. During the month of April, 1943, the Seaboard handled 464 extra trains. That included special military trains and extra sections of regular [fol. 1499] trains operated for military movements. In May we handled——

Examiner Stiles: Are you telling now about interstate?

The Witness: Over the whole system.

By Mr. Reynolds:

Q. This is the whole system, Mr. Makinson?

A. I am just using this because I don't want to leave the impression that all of the military money is clear profit.

Mr. Bruce: May I ask a question right there, Mr. Counsel?

Mr. Reynolds: Yes, sir.

Mr. Bruce: Do you handle any military trains in intrastate commerce in Alabama?

The Witness: The location of the camps——

Mr. Bruce: I am asking you if you do.

The Witness: —does not cause us to handle any military trains wholly within the State of Alabama.

Mr. Bruce: Then I object to the examination.

Mr. Reynolds: The purpose of the question is to show to the Commission the unusual expenses in connection with the handling of military movements of traffic. While the movement on this particular railroad may not be intrastate, I think it is pertinent to show the conditions surrounding military traffic.

Mr. Bruce: Counsel is bringing in a disability or added cost that hasn't anything whatsoever to do with the military movement. There is no military movements between [fol. 1500] points in Alabama. You are placing a burden there on interstate commerce.

Examiner Stiles: Do you have a military movement in interstate commerce through Alabama, into or out of Alabama?

The Witness: Yes, sir, very much of it.

Examiner Stiles: The objection is overruled.

The Witness: One of our expensive operations, in getting down to points, is our connection from the Frisco at Birmingham. There are many times that we have to operate an extra section from Birmingham to Atlanta or east with three, four or five cars. Of course, no money can be made on such a small train, but the military necessity demands it, and we accommodate the Army to the extent of our ability.

By Mr. Reynolds:

Q. Let me ask you this, does the movement of military traffic involve a large portion of empty car miles?

A. The assembling of equipment for military movements and even the operation of special deadhead equipment trains many miles is an added cost, a very heavy cost in many cases. We at one time handled a lot of extra equipment on freight trains to get it in position. But the military authorities were not satisfied with that, and at their request and for other reasons we have stopped handling extra equipment on freight trains now. We have to handle it on extra passenger trains. If we don't have room, we have to run special deadhead equipment trains.

Q. Is it fair to say that in the movement of bodies of troops it is necessary for you to have some more equipment [fol. 1501] than you own yourselves, and you have to get that equipment from your connections?

A. Far more. The Seaboard has a lot of camps on its railroad, and we have not near enough equipment of our own ownership to take care of all of the military movements from the camps on the Seaboard.

Q. When you do have to get the equipment from your connections, is it necessary in most instances to move that equipment empty to the point at which the military is going to entrain?

A. I wouldn't say in most cases, I would say in a large proportion. I wouldn't say even in 50 per cent of the cases, but close to it, because the coordination between the Army and the railroads now eliminates it to the extent possible, the useless deadheading of equipment. They try to coordinate the movements, but there is a large percentage, less than 50 I would say, of deadhead movements.

Q. Do you have to have special representatives on troop trains?

A. Yes, sir, at the direct request, and I might say almost demand of the Army, we put a special escort on each troop train. He may be a passenger representative or a freight representative, but he has to be on there.

Q. Do you think of any other matter at this time which is an item of added expense in handling military traffic?

A. No, sir, that is all I have to offer.

Mr. Reynolds: I will ask, Mr. Examiner, that Exhibit [fol. 1502] No. 8 be received in evidence.

Mr. Bruce: I have an objection to offer. I offer the objection this Exhibit is a theory, it is an explanation that is unlawful, that the witness has not in any way indicated

that there has been any movement, except that there were rumors that there are movemnts.

He has not named any person who has complained about these conditions, nor has he named anybody who has traveled under that condition. I would like to have my objection noted, Mr. Examiner.

Examiner Stiles: The objection is noted and the objection is overruled. Exhibit No. 8 is received in evidence.

(Exhibit No. 8, witness Markinson, received in evidence.)

Examiner Stiles: Is that all?

Mr. Reynolds: That is all on direct.

Examiner Stiles: You may cross examine.

Cross-examination.

By Mr. Bruce:

Q. Now, let's talk about how much mileage you have between the Alabama-Georgia line and Birmingham on the Seaboard. How many miles do you operate in Alabama on that line?

A. Didn't I give that mileage at the beginning.

Q. Approximately? Can you tell me approximately?

Mr. Reynolds: You did give it.

[fol. 1503] Mr. Bruce: I will lend you a guide.

The Witness: I have the mileage. I stated it at the beginning.

Mr. Reynolds: All right, state it again.

The Witness: 93.5 from Birmingham to Palestine, Alabama, 73.9 from Montgomery to Pittsview, Alabama. We don't show the exact mileage to the State line, but I can furnish it to the Commission later if it is desired. That is to the last station before you hit the State line, a toal of 167.4 miles, a small but very important part of the Seaboard.

By Mr. Bruce:

Q. Now, on your Exhibit No. 8, page 1 thereof, the first example you show between Borden Springs, Alabama, and Memphis, Tennessee, is that a going route, do passengers use that route between Birmingham and Borden Springs?

A. Yes, sir. Up until a few months ago there was through pullman service over that route, cars running from

Washington to Memphis. Due to the exigencies of the war, the line has been shortened to Birmingham, but still makes connection, and it is a very important connection of the Seaboard.

Q. That connection does not operate over the Seaboard, does it?

A. I don't understand that question.

Q. Is it on the Seaboard System, it that a connecting line movement?

A. The Seaboard from Borden Springs to Birmingham?

Q. Yes.

[fol. 1504] A. Frisco lines from Birmingham to Memphis. Under this example the Seaboard would be the one deprived of the 47 cents revenue.

Q. Is this a map of your system (indicating)?

A. That is not a correct map, this what we call a "diagram map".

Q. Is that map in your time table?

A. It is in our advertising folder, and also in the Official Railway Guild on a smaller scale.

Q. In your operation between Birmingham and Cedartown, that is an interstate movement, is it not?

A. That is correct.

Q. And the coach fare in interstate commerce is 2.2 cents?

A. That is right, 2.2 cents per mile, with fractions added.

Q. Now, on a first class passenger movement from Cedartown to some point in Georgia, what is the present fare?

A. First class?

Q. First class.

A. It is approximately 2 cents per mile.

Q. 2 cents?

A. That is right.

Q. Is it 2.2 cents?

A. Wait a minute. That is Georgia you are talking about? Yes, they have got the 10 per cent increase on it, and it is 2.2.

[fol. 1505] Q. Let's take a passenger traveling on the same train from Alabama to a point in Georgia. What would be the first class fare for that passenger?

A. From a point in Alabama to a point in Georgia, first class would be 3.3 cents per mile one-way.

Q. In other words, the interstate fare for an equal distance from Alabama to Georgia is 3.3 cents per mile, isn't that right?

A. For an equal distance?

Q. Yes. Let's say for 100 miles from a point in Alabama, 100 miles into Georgia, isn't the fare 3.3 at the present time, first class?

A. Approximately $3.30.

Q. For 100 miles in Georgia, the fare is 2.2 cents, isn't that right?

A. Approximately $2.20.

Q. Is that class of passenger travel on the same train, both coaches and—we will say a man did not have a pullman seat in the pullman; could he travel in the same car?

A. On the Seaboard he would, yes, sir.

Q. And you call that discrimination against interstate commerce?

A. Do you mean as to the Georgia part of it, or the Alabama part of it?

Q. Yes. You made various examples in Alabama on coach fare.

Mr. Reynolds: We say the Georgia first class fare should [fol. 1506] be 3.3, yes.

The Witness: We have an application before them now, not on the first class, but on the coach.

By Mr. Bruce:

Q. Are you familiar with the fact that the Interstate Commerce Commission has approved the 2.2 cents fare between points in Georgia under a Section 13 investigation?

A. Not the 2.2, no, sir.

Q. You don't know that they did that?

A. Not the 2.2.

Q. Have you ever had any passenger or anybody living on the Seaboard make a complaint to you about the fares in Alabama being lower than they are in interstate commerce?

A. No, sir, I have had no complaints.

Q. Has anybody ever complained to you about prejudice existing against interstate commerce, preference being given to intrastate commerce in Alabama?

A. Not in Alabama, I have not had any direct ones from Alabama, but I have in other states, where we have a

greater interest, and the accom-odations are more—are easier for the passengers to avail themselves of, and amount to more in dollars and cents.

Q. Do you have any knowledge of any person whose name you can give me, who has defeated the interstate rates, interstate fares by the use of combination of an interstate fare and an intrastate fare?

[fol. 1507] A. In my first statement I said that had come to my personal attention, that it was being done on baggage, on account of my handling baggage and refund claims in past years. I didn't make a record of the names nor addresses of the passengers.

Q. Could you grant a refund based upon that kind of a ticket?

A. Well, I'll tell you one of them, so you will get the idea. We had a refund, I mean a baggage claim in connection with a man who checked his baggage through to a point beyond Boston, I don't remember whether it was B & M or B & A, but anyway to Boston and a commutation form of coupon beyond. Our agent at Miami did not have any commutation tickets, he didn't know what they were, he didn't know any difference, as to whether it was good for baggage or not, so he checked the baggage through.

That is how that particular one came to my attention that passengers were defeating the through fares. There were others, the circumstances of which I don't recall as vividly as that one at the time, but there have been, through the years, whenever this condition has developed, you get it coming through your office.

Q. You say "through the years"?

A. That is right.

Q. These fares are——

A. I mean through those cases of this kind. This is not the first time we have had different fares intrastate, nor the [fol. 1508] first time we have had Thirteenth Section petitions.

Q. We are talking about this case at the present time. When did the rates go into effect in interstate, I mean on the increased basis of 2.2 cents?

A. As I recall, it was October 1, 1942.

Q. When would the suspended tariffs have become effective?

A. For Alabama fares?

Q. Yes.
A. On the same date, as I recall it.

Mr. Oliver: December 1.
The Witness: December 1? I don't recall the exact dates.

By Mr. Bruce:

Q. These examples which you have given me, are they since October 1, 1942, or prior to that time?
A. These statements of the manner in which the passengers might defeat the through fare, sheet 1, for instance, is based on the fares that the passengers are paying today.
Q. I am talking about this baggage check refund, the so-called movement on your commutation ticket, when did that occur?
A. Several years ago.

Mr. Bruce: Well, then, it has nothing whatsoever to do with this case, Mr. Examiner. The interstate fares went into effect on October 1, so he states, That is all I have.
Examiner Stiles: Is there any redirect?
Mr. Reynolds: No redirect.
Examiner Stiles: You are excused.

[fol. 1509] (Witness excused).

Mr. Burger: Could I enter an appearance? William C. Burger, for the Louisville & Nashville Railroad Company.
Examiner Stiles: Mr. Oliver entered your appearance for you.

T. K. Lynch was sworn and testified as follows:

Direct examination.

By Mr. Reynolds:

Q. Will you please state for the record your name, address, and occupation?
A. T. K. Lynch, Wilmington, North Carolina, Assistant General Passenger Agent, Atlantic Coast Line Railroad.
Q. Have you prepared some Exhibits to be introduced in evidence in this case?
A. I have.

Q. What is the first Exhibit that you desire to introduce?

A. I have an Exhibit here——

Q. Identify it please.

A. It is a statement which shows the manner in which the lower basis of fares intrastate in Alabama makes it possible for passengers to defeat the through published interstate fares.

Mr. Reynold: May it be marked for identification Exhibit No. 9?

Examiner Stiles: The Reporter will so mark it.

(Exhibit No. 9, witness Lynch, marked for identification.)

[fol. 1510] Mr. Bruce: I offer the same objection. May it be noted, Mr. Examiner?

Examiner Stiles: Yes, sir.

By Mr. Reynolds:

Q. Do you want to say anything about your Exhibit, Mr. Lynch?

A. Yes, sir. I will just deal with two of these instances. Take the second one there. It shows that a passenger from Bainbridge, Georgia, to Birmingham, Alabama, moving via the ACL to Montgomery, and the L&N beyond, the one-way interstate coach fare is $6.02.

By buying a ticket from Bainbridge to Dothan, and there re-buying to Birmingham an intrastate ticket he may travel for $4.90, at a saving of $1.12.

Now, the last one, Thomasville, Georgia, to New Orleans, Louisiana, via ACL to Montgomery and L&N beyond. The one-way interstate coach fare is $11.55. If a passenger should buy a ticket from Thomasville to Montgomery and there re-buy a ticket from Montgomery to Mobile, and there re-buy a ticket from Mobile to New Orleans, he can make the trip for $10.69, at a saving of 86 cents.

Q. Thomasville and Bainbridge are both important points on your line, aren't they?

A. I would say they are, on our line into Montgomery, sir, particularly Thomasville.

Examiner Stiles: Do you have through service without [fol. 1511] change of trains from Thomasville to New Orleans?

The Witness: No, you have to change trains.

Examiner Stiles: How many times is it necessary that you change trains?

The Witness. You change at Montgomery. It depends upon how you go.

Examiner Stiles: In other words, are they necessary changes?

The Witness. No, they are not necessary changes, no, sir.

Mr. Reynolds: You have to change at Montgomery, don't you?

The Witness: You have to change at Montgomery.

Mr. Bruce: Do you mean you have through service from these points to New Orleans, for instance, Thomasville, Georgia, to New Orleans?

The Witness: Service?

Mr. Bruce: Through service, through trains?

The Witness: I said no, I said you had to change at Montgomery.

By Mr. Reynolds:

Q. In going from Thomasville to New Orleans, you do have to change at Montgomery?

A. That is right.

Q. In going from Thomasville to Memphis, you also have to change at Montgomery, don't you?

A. That is correct.

[fol. 1512] Q. In going from Bainbridge to Birmingham you have to change in Montgomery, don't you?

A. That is correct. The Coast Line stops at Montgomery.

Q. In going from Thomasville to Montgomery, the train stops at Dothan, doesn't it?

A. That is correct.

Q. And the passenger can get off the train at Dothan and purchase a coach ticket at the intrastate fare rate from Dothan to Montgomery?

A. He can.

Q. I neglected to ask you, Mr. Lynch, to describe the line of the Atlantic Coast Line Railroad in Alabama.

A. Well, the Coast Line in Alabama, we will start at Montgomery. It runs from Montgomery to the Chattahoochee River to Alaga, Alabama, a distance of around 150 miles. It has three branches, one from Sprague to Luverne,

from Waterford to Elba, and from Grimes to Abbeville. They are short branches.

Q. What is your next Exhibit?

Examiner Stiles: Before you go to the next Exhibit, take this illustration from Bainbridge to Dothan and Dothan to Birmingham.

The Witness: That is correct, yes, sir.

Examiner Stiles: As I understood it, there is a through train, but the train stops at Dothan?

[fol. 1513] The Witness: That is correct.

Examiner Stiles: So the passenger could get off and purchase a ticket?

The Witness: He can.

Examiner Stiles: How long does the train stop there, does your schedule show?

The Witness: One of them is 5 minutes I believe and the other is 8 minutes, if my recollection is correct. A copy of this was filed in answer to the questionnaire from the Alabama Commission. At Dathan one has 10 minutes and the other has 8. No, that is southbound, going in. They both have 5 minutes coming into Montgomery in this particular instance.

Examiner Stiles: They have 5 minutes?

The Witness: 5 minutes.

Examiner Stiles: Do you think it is probable that a passenger in these days of crowded stations would be likely to figure on purchasing a ticket in that 5 minutes, get off the train, go in there and get his ticket in the crowd and get back on the train? Does it seem to be a probable thing to you?

The Witness: Well, he can do it, Mr. Examiner.

Examiner Stiles: Does it seem a probable thing to you?

The Witness: Well, the public is generally taking advantage of all savings they can figure. I admit it is not [fol. 1514] probable, but it is there, yes, sir, an opportunity for them to do it.

By Mr. Reynolds:

Q. Mr. Lynch, isn't it possible for the passenger to re-buy on the train?

A. That can be done.

Examiner Stiles: Is the cash fare higher than the ticket fare?

Mr. Reynolds: Do you have a penalty in other words for purchasing a ticket on the train?

Examiner Stiles: They used to have. Do they still have that?

The Witness: I understand it is higher, yes, sir.

Mr. Bruce: 10 cents.

Mr. Reynolds: 10 cents.

By Mr. Reynolds:

Q. A penalty of 10 cents?

A. That is correct, that is my understanding.

Q. He could still save 54 cents, couldn't he?

A. The Examiner was talking about from Bainbridge to Birmingham. He could save more than that.

Q. He could still save $1.01?

A. $1.02.

Q. What is your next Exhibit, Mr. Lynch?

A. This is an Exhibit which shows the manner in which the lower basis of fares intrastate in Alabama results in discrimination against interstate passengers. It shows [fol. 1515] from Thomasville to Ozark, Alabama, a distance of 118.8 miles, the passenger pays $2.64. From Dothan to Montgomery, a distance of 119 miles, the passenger pays $2.00. The interstate passenger travels two-tenths of a mile less than the intrastate passenger and pays 64 cents more. They both have the same trains available, and the same equipment available.

(Exhibit No. 10, witness Lynch, marked for identification.)

By Mr. Reynolds:

Q. Is the Atlantic Coast Line encountering any particular difficulty and expense in connection with passenger train operations under present conditions?

A. Yes, it is. The present conditions, due to the large increase in travel, causes considerable additional expense. We have been forced to practically double the ticket forces in a large number of our ticket offices, and frequently we are called upon to supply conductor's helpers on a large number of our trains.

Further, in handling troop movements, we have the added cost of assembling equipment at point of origin, which necessitates deadheading equipment for long-distances in many cases. And after the movement has been completed that equipment has to be returned to the starting point in a number of instances.

Mr. Bruce: Are you talking about troop movements now?

The Witness: That is correct.

[fol. 1516] By Mr. Reynolds:

Q. Go ahead, sir.

A. Further, we must have a representative riding the troop trains, which is an additional expense. Moreover, in order that we may at all times be in position to take care of the Government requirements it has been necessary to increase the personnel in our general offices, so that we may furnish 16 to 24 hours service. This, of course, is an additional expense.

Since 1939 we have spent considerable money in remodeling and air conditioning passenger equipment, in an effort to recapture travel from other methods of transportation.

During this period we have air conditioned or purchased new with air conditioned facilities a total of 123 coaches. Of this number 50 are equipped with reclining seats, with an average capacity of 52 persons per car.

Q. By the way, do you operate air conditioned coaches on your line from Montgomery to the Georgia line?

A. We do. We have two air conditioned coaches on each train, and we have an extra coach for over-flow travel that is not air conditioned.

Q. That train handles both interstate and intrastate passengers?

A. That is right.

Q. Go ahead, sir.

A. Of this number, 50 cars are equipped with accommodations for an average capacity of 52 persons. 19 of these cars were remodeled from so-called standard weight [fol. 1517] straight back seat coaches, which had an average seating capacity of 88 persons.

It can be readily seen that two of the old type coaches would accommodate more passengers than three of the new 52 seat type, which means lower revenue per car. Out of the remaining 31 air conditioned coaches——

Examiner Stiles: "Means lower revenue per coach"? That would be simply if you were carrying the passenger coach capacity in each case, both before and after remodeling?

The Witness: How is that?

Examiner Stiles: If you were simply carrying the coach capacity?

The Witness: That is correct.

Examiner Stiles: Of course, you are not asserting that that is all you are carrying at the present time?

The Witness: By no means. Of the remaining 31 air conditioned coaches, 15 are the new conventional weight, deluxe coaches, and 16 are the light weight type, all with air conditioning apparatus.

All of these 50 coaches just mentioned are equipped with dressing rooms for both ladies and men, with soap, towels, drinking cups furnished without charge.

Examiner Stiles: Didn't you always furnish the towels and drinking cups without charge? That is nothing new, is it?

The Witness: Well, I have been on them that didn't have [fol. 1518] them.

Mr. Reynolds: I think it is new, Mr. Examiner. I don't know of any day coaches in the old days on which they had towels without charge.

Examiner Stiles: You are speaking of the day coaches?

The Witness: I used to ride them from——

Mr. Reynolds: Yes, sir, he is talking about day coaches.

The Witness: These air conditioned coaches. I used to ride them in the old days to Lynchburg, Virginia, and I don't remember ever having had a towel.

By Mr. Reynolds:

Q. Go ahead, Mr. Lynch.

A. The Coast Line has purchased during the last five years three new streamline passenger trains, with a total of 16 coaches, 5 combination baggage coaches, 5 dining cars, and 5 lounge observation cars; also 29 Diesel-electric locomotives for passenger train service; two passenger representatives and two maids accompany these trains from origin to the destination. There is one attendant to each two coaches also provided. Naturally these refinements add to the expense of our operations.

Mr. White: Do you operate any of those streamlined trains into Alabama?

Mr. Reynolds: He is coming to that.

The Witness: None that we own. We operate a third day [fol. 1519] train which we participate in the movement of, one train every third day.

Mr. White: That is Chicago to Miami?

The Witness: That is correct. In addition to these improvements the Coast Line has remodeled and air conditioned four standard weight passenger baggage coaches with 20 reclining seats, which are used principally for the accommodation of the colored traffic.

Moreover, we have remodeled and equipped six air conditioned tavern lounge cars, containing 44 seats. They are equipped with radio, supplied with magazines, and provide buffet service, for which from 2 to 4 attendants are necessary. This service greatly increases the cost of passenger operation.

The Atlantic Coast Line handles over its line in Alabama one of the so-called Chicago to Miami streamliners. This train, known as the South Wind, is a reserve seat coach train, and operates every third day. It consists of seven cars with a total seating capacity of 293 persons. Of this number, 35 seats are in the lounge-observation car, and are restricted to sale over each individual railroad participating in the operation of the service.

By Mr. Reynolds:

Q. You mean by that when the South Wind gets to Montgomery, going southeast, you have 35 seats in the lounge car which can be sold to passengers for Dothan and Ozark and points east of there?

[fol. 1520] A. That is correct, on the Coast Line.

Mr. White: You mean if they are not occupied when it gets to Montgomery?

The Witness: They are for sale over each individual road participating in the operation of the train. In ordinary times those seats have not been sold.

By Mr. Reynolds:

Q. Do I understand it then that this train operates in connection with the L&N?

A. That is correct.

Q. And that the L&N cannot sell seats in that lounge observation car beyond Montgomery?

A. That is correct.

Q. And when the South Wind gets to Montgomery, there are 35 seats to be sold by the Atlantic Coast Line to passengers going to Dothan, Ozark, and points east?

A. As far as Jacksonville.

Mr. White: You mean to say a man cannot buy one of those seats in Chicago to Miami?

The Witness: That is correct.

Mr. White: And he cannot buy one in Birmingham to Miami?

The Witness: Not in the lounge car. Those seats are assigned southbound by the Pennsylvania, the seats on the train. Northbound they are assigned by the East Coast. They distribute the diagram, which shows where each seat is on sale, which seats for each city.

[fol. 1521] Mr. White: How many such seats do you have on this train, I mean these lounge seats?

The Wifness: There are 35 in the car.

Mr. White: And that is the only seats of that sort?

The Witness: That is right.

Mr. White: On that train?

The Witness: That is right, that is correct.

By Mr. Reynolds:

Q. Of course, if the seats in the coaches have not been sold beyond Montgomery, they also can be sold, can't they?

A. That is correct.

Q. All right sir, Mr. Lynch, proceed.

Mr. White: Do your tariffs filed with the Alabama Commission and the Interstate Commission make any such provision as you have just stated about these seats?

The Witness: Not that I know of, sir.

Mr. White: That is something unusual I think.

Mr. Reynolds: It may be unusual, but it is a fact.

Mr. White: I never heard of it before.

Mr. Reynolds: Proceed please.

Mr. White: All right.

By Mr. Reynolds:

Q. All right, proceed.

A. I showed in the answer which we filed, which the Coast Line filed dated June 12, to the questionnaire received from the Alabama Commission, this train stops at Dothan, Ozark, [fol. 1522] and Montgomery on the Atlantic Coast Line.

Mr. Bruce: Those are the only stops in Alabama?

The Witness: That is correct. It is available to intrastate passengers who pay 1.65 cents per mile as compared with the interstate charge of 2.2 cents per mile.

By Mr. Reynolds:

Q. Mr. Lynch, Mr. Bruce interrupted you to ask if those were the only three stops in Alabama. The train also stops at Birmingham, doesn't it?

A. I said on the Coast Line. The train stops at Birmingham on the L. & N.

Mr. Reynolds: Mr. Examiner, I ask that Exhibits 9 and 10 be received in evidence. And the witness is ready for cross examination.

Examiner Stiles: Exhibits 9 and 10 are received in evidence.

(Exhibits Nos. 9 and 10, witness Lynch, received in evidence.)

Mr. Bruce: I have an objection. Will you note the objection?

Examiner Stiles: Yes.

Mr. Bruce: On Exhibit No. 9.

Examiner Stiles: On the same ground as all the previous Exhibits, of the same character?

Mr. Bruce: The same objection as I have made.

Examiner Stiles: The record will show the objection.

Cross-examination.

By Mr. Bruce:

Q. All of these new employees that you have had to em- [fol. 1523] ploy, were they necessary in conducting your business between Dothan, Alabama, and Montgomery, Alabama?

A. By no means.

Q. These are the two principal points on your line in Alabama, are they not?

A. Ozark is a rather important point.

Q. On your streamliner, you don't stop at Ozark?

A. We do.

Q. You do?

A. We stop there to pick up people for Montgomery or beyond.

Q. Montgomery north?

A. That is correct.

Q. In other words, you don't stop there to pick up any passengers from Ozark to Troy?

A. That is correct.

Q. What causes this added number of employees that you have hired?

Mr. Reynolds: He went all into that. I don't see why this gentleman on cross-examination——

Mr. Bruce: I mean as it applies to Alabama.

Mr. Reynolds: Let me finsh. I don't see why this gentleman should ask the witness to repeat what he said on direct. If he has any questions to ask him about the statements he made on direct, it looks like to me he can ask him without going to the necessity of getting him to repeat again what he [fol. 1524] has already stated.

Mr. Bruce: He is talking about the system, Mr. Examiner. He was not talking about as it applied between Dothan and Montgomery. I am talking about as it applies between Dothan and Montgomery at the present time. He was talking about the Atlantic Coast Line.

Q. Isn't that right?

A. That is correct, generally.

Q. I want to know what added expense the Atlantic Coast Line has incurred, and the reason for the added expense, between Dothan and Montgomery?

A. Well, that would be a difficult question to answer, Mr. Bruce. We have a camp at Daleville, about twenty-five or thirty thousand men, adjacent to Ozark. Naturally we have had to increase our ticket forces.

Q. For the camp, is that right?

A. Well, a great many of those people go to Ozark and get on the train.

Q. Are these troops that you are talking about traveling?

A. They are troops. They become furloughees, in many cases, that get on the train.

Q. You stated you were forced to acquire by borrowing, or whatnot, a considerable amount of added equipment. Is that added equipment used in the transportation of intrastate passengers in Alabama, that is civilian passengers?

[fol. 1525] A. Well, Mr. Bruce I don't think I said that we were forced to acquire added equipment.

Q. Not acquire, but I mean lease added equipment, or borrow, or whatever you do?

A. I don't think I said that. I said we purchased or reconditioned certain equipment.

Q. You leased equipment?

A. Not leased equipment, reconditioned our own, or purchased new equipment, air conditioned.

Q. This air conditioned equipment you are talking about, is that altogether on the streamliner?

A. No, it is on our two local trains between Montgomery and Savannah, Georgia. We have two coaches on that that are air conditioned, two on each train.

Q. Do you have an attendant on every two coaches on that train?

A. No.

Q. But you do have an attendant for every two on the streamliner?

A. That is correct.

Q. And that streamliner crosses the State of Alabama. Where does it come in at?

A. At the Tennessee-Alabama line.

Q. Into Birmingham?

A. You mean over the Coast Line?

[fol. 1526] Q. Yes.

A. Going north or going south?

Q. No, coming south, what line does it come over?

A. It comes in over the L. & N. and runs through Birmingham and Montgomery, and goes out at the Chattahoochee River at Alaga.

Q. Do you serve any intermediate points between the Alabama-Tennessee line excepting Birmingham, between Montgomery and the Alabama Tennessee line on your streamliner?

A. Do we serve it? The Coast Line does not go beyond Montgomery. It stops at Birmingham on the L. & N.

Q. I mean that streamliner train in its operations throughout Alabama.

Mr. Reynolds: We told you where it stopped, Birmingham, Montgomery——

Mr. Bruce: I want to know——

Mr. Reynolds: —Ozark and Dothan.

Mr. Bruce: I want him to state in the record whether or not that train stops between Birmingham and Montgomery, the streamliner.

The Witness: It is not advertised to stop. That is an L. & N. operation.

By Mr. Bruce:

Q. It is not scheduled to stop then?

A. That is correct.

Q. And it does not stop between Birmingham and the Alabama-Tennessee line, does it?

[fol. 1527] A. It is not scheduled to stop.

Q. Well, does it stop?

A. I happen never to have ridden it. I can't answer that question unless I rode it every day, to see whether it ever stopped.

Q. Now, you said something about an increase in the handling of troops. You had an increased cost of operation in handling troops, have you?

A. We have to deadhead a lot of this equipment.

Q. That is coach equipment?

A. Correct. Sometimes it is pullman equipment, or tourist equipment.

Q. Does that increase your empty car miles?

A. That seems self-evident.

Q. Have you had any trouble in regards to the operation of your trains through your various terminals?

A. What sort of trouble, Mr. Bruce?

Q. Tell me whether you have had or not. I don't like your answer. Have you had any trouble in operating your trains through your terminals, through the terminal at Dothan, because of troop movements?

A. Well, I don't know as I exactly understand you. You will have to be a little more specific.

Mr. Reynolds: Well, I don't know that I understand what the gentleman wants either, but if you do understand it, [fol. 1528] answer to the best of your ability.

The Witness: Well, I don't understand what he wants to know.

Mr. Bruce: All right. You will force me into an explanatory series of questions.

By Mr. Bruce:

Q. How long are your troop trains, how many cars?

A. Confined solely to troops?

Q. Troops?

A. No freight?

Q. Whatever a troop train is comprised of. It might have freight on it. You handle freight in conjunction with your troop movement, don't you?

A. At times, yes, sir.

Q. That is the property of the troops?

A. That is correct, or rather of the United States Government.

Q. How long is such a train?

A. Well, I have seen them 50 cars long, but not generally. Generally they run around 35.

Q. Are your leads in your passenger stations long enough to accommodate 50 cars?

A. I couldn't answer that, Mr. Bruce, I don't know.

Mr. Bruce: The Seaboard will have an operating witness?

Mr. Reynolds: This is a Coast Line witness. No, sir.

Mr. Bruce: I mean the Coast Line?

[fol. 1529] Mr. Reynolds: No sir, they will not.

Mr. Bruce: Mr. Examiner, in the showing made before the Alabama Commission that particular point was stressed, that terminal delays is one of the greatest extra costs incident to the troop movements, because of the fact that the majority of terminals do not have tracks in there, leads into the station, which would accommodate over an ordinary passenger train.

Examiner Stiles: I don't think they have asserted that so far in this hearing.

Mr. Bruce: I didn't hear you.

Examiner Stiles: I say I don't think they have asserted that so far in this hearing.

Mr. Bruce: No, but we are being tried at the present time on the evidence, the Alabama Commission is being tried at the present time on the evidence which was submitted to the

Alabama Commission. All of these things were brought before the Alabama Commission.

Mr. Reynolds: We are not trying the Alabama Commission on the evidence that was brought before that Commission, or on any other evidence. We are not trying the Alabama Commission, we have a petition before the Interstate Commerce Commission asking that Commission to grant us certain relief which we think we are entitled to under the law. We are not trying the Alabama Commission.

[fol. 1530] Mr. Bruce: Are you advancing the theory here that the preceding witnesses have not testified only as to the extra cost of operation as it pertained to the troop movement?

Mr. Reynolds: I merely answered your assertion that the Alabama Commission is on trial. I say they are not. We are asserting a right given us by the Interstate Commerce Act. We are not trying the Alabama Commission or any other Commission.

Mr. Bruce: The order of the Alabama Commission is at the present time before the Interstate Commerce Commission to determine whether or not the Interstate Commerce has been prejudiced, and unduly prejudiced, and whether or not intrastate commerce has been unduly preferred by the action of the Alabama Commission.

Examiner Stiles: Let's proceed with this cross examination. You asked the question of the witness whether they had had certain trouble, and he didn't know what you meant by that trouble, so you were proceeding to develop it.

Mr. Bruce: Mr. Examiner, I am trying to find——

Examiner Stiles: Have you anything further on that line?

Mr. Bruce: I am trying to develop from this witness whether he knows what creates the extra cost of operation that he has spoken of.

Mr. Reynolds: I will say in all fairness to the witness he is not an operating witness. He is Assistant General [fol. 1531] Passenger Agent. He doesn't know anything about railroad operations.

Mr. Bruce: All right then, on what testimony is the Commission going to rely in regards to the so-called abnormal expense that the Atlantic Coast Line has incurred? You have a witness, and he is the only witness.

Mr. Reynolds: The witness knows about the extraordinary expenses, but when you ask him about lead tracks into stations, and things of that sort, you are getting over his head.

Mr. Bruce: All right, I will desert that question.

By Mr. Bruce:

Q. I am going to ask you now, do you have train escorts on strictly civilian passenger trains?

A. Train escorts?

Q. Yes sir.

A. No.

Q. You stated you had train escorts on your troop trains, do you not?

A. That is right.

Q. Do you have the same kind of escort on a passenger train?

A. No. That is something that is required by the Government, to put them on troop trains.

Q. Of course, I don't care who prescribed the condition, what I want to know is—you have answered the question. Does the military passenger traveling on a Government transportation request pay the same rate as an interstate [fol. 1532] passenger traveling on the same train?

A. It depends upon where he travels from.

Q. He is traveling under Government orders?

A. It depends where he was traveling.

Mr. Reynolds: You had in mind——

By Mr. Bruce:

Q. Say from Montgomery to Thomasville?

A. Right, less a certain amount, 5 per cent.

Q. In other words, he pays less, does he not?

A. That is right.

Q. A man on furlough in uniform, what does he pay?

A. 1¼ cents.

Q. Presuming that a man was traveling from Bainbridge, Georgia, to any point in Georgia, riding on the same train in coaches, and he had a first class ticket, what would he pay, what fare would he pay?

A. You said riding from Bainbridge, Georgia, to any point in Georgia?

Q. With a first class ticket?

A. Riding in a coach?

Q. Yes.

A. Mr. Bruce, the coach fare and the unrestricted fare are different.

Q. I am not talking about coach fare, I am talking about the first class fare?

A. 2.2 cents a mile.

[fol. 1533] Q. Would he pay 2 cents a mile?

A. 2.2 cents a mile in Georgia.

Q. On a first class ticket?

A. Unrestricted.

Q. What would he pay if he was traveling an equal amount of miles in Alabama on the Atlantic Coast Line?

A. He would pay 3.3.

Mr. Bruce: That is all I have. Thank you.

Mr. Reynolds: I want to ask you one or two questions.

Redirect examination.

By Mr. Reynolds:

Q. Mr. Lynch has it been necessary to increase your station employees at Montgomery and Ozark, do you know, especially your ticket employees?

A. I am not positive, Mr. Reynolds. I understand it has been. I haven't seen a roster of the employees of several years ago, in comparison with this time.

Mr. White: As a matter of fact, Mr. Lynch, the station at Montgomery serves not only your line but all other lines that come into Montgomery, into the Montgomery passenger stations?

The Witness: That is right.

By Mr. Reynolds:

Q. At points like Montgomery, near which camps are located, a great many friends and relatives, civilians, come to see the soldiers at the camps, don't they?

A. That is true.

Mr. Reynolds: I haven't anything further.

[fol. 1534] Mr. Bruce: I have another question.

Recross-examination.

By Mr. Bruce:

Q. Have you increased your number of passenger trains serving civilian passengers between Dothan and Montgomery for the past year?

A. You cannot increase them, sir, without authority.

Q. I know that the ODT has frozen the number of trains, but that order has not been effective throughout the past year?

A. It has been with us.

Q. Have you increased your number of trains for the past two years between Montgomery and Dothan?

A. No.

Q. But you have handled a great number of troop trains between Montgomery and Dothan, have you not, or between Montgomery and some other point?

A. I suppose we have, yes sir, quite a number.

Q. I am asking you if you know. Do you know?

A. Yes sir, I know we have.

Mr. Bruce That is all.

Examiner Stiles: You are excused.

(Witness excused.)

Examiner Stiles: Let's take a short recess.

(Short recess.)

Mr. Reynolds: I will call Mr. Higgins.

Examiner Stiles: Mr. Bruce asked if we might have the [fol. 1535] last witness recalled, Mr. Reynolds.

Mr. Reynolds: Yes sir.

T. K. Lynch having been previously sworn, testified further as follows:

Cross-examination.

By Mr. Bruce:

Q. Have you ever received any complaints from any one about the so-called discriminatory rates in Alabama?

A. Personally I have not.

Q. And has any locality ever complained to you?

A. Not to me.

Q. Do you know whether they have complained to your line, that is to the Atlantic Coast Line?

A. I do not.

Mr. Bruce: That is all.

(Witnessed excused.)

Mr. Reynolds: I will call Mr. Higgins.

J. A. Higgins was sworn and testified as follows:

Direct examination.

By Mr. Reynolds:

Q. Mr. Higgins, please state for the record your name, address, and occupation.

A. J. A. Higgins, General Passenger Agent, I suppose for the Western Railway of Alabama in this case, the A&WP on the other hand, and the Western Railway of Alabama on this end.

Q. How long have you occupied your present position?

[fol. 1536] Off and on about 32 years.

Q. Will you describe the location of the Western Railway of Alabama in Alabama, between what points?

A. It extends from Lanett, Alabama, and ends in Selma, Alabama, a distance of about 137 miles, 87 miles from Lanett to Montgomery, and 50 miles beyond.

Q. Have you an Exhibit, Mr. Higgins, comparing the cost to a coach passenger of traveling intrastate in Alabama, with the cost to a coach passenger of traveling approximately the same distance between a point in Alabama and a point in an adjoining State.

A. Yes sir.

Mr. Reynolds: May that be marked for identification as Exhibit No. 11?

Examiner Stiles: It may be so marked.

(Exhibit No. 11, witness Higgins, marked for identification.)

By Mr. Reynolds:

Q. That Exhibit is just like others previously introduced, and I don't think it is necessary to go into any explanation of it. It is self-explanatory?

A. Yes sir.

Q. What is your next Exhibit?

A. I have several Exhibits which reveal various combinations on which the through fares can be defeated.

Q. Identify the one that you want marked Exhibit No. 12.

A. It has the figure "41 cents" as the difference in fare.

[fol. 1537] (Exhibit No. 12, witness Higgins, marked for identification.)

Q. What is the one you want marked No. 13?

A. It shows a difference in fare of 33 cents.

(Exhibit No. 13, witness Higgins, marked for identification.)

Q. And the other one is No. 14?

A. That is right, showing 74 cents.

(Exhibit No. 14, witness Higgins, marked for identification.)

Q. Exhibits 12, 13, and 14 show how the through interstate published fares can be defeated by a passenger purchasing tickets at the rate of 1.65 cents per mile for the portion of the journey in the State of Alabama, is that correct?

A. Yes. Now, that to some may seem conjectural, but there is a possibility and whenever there is a possibility, there is effectiveness. And from personal observation, not from knowing the witnesses, or anything like that, but sitting in a ticket office daily and hearing passengers come in and make inquiries for the rate we will say from Atlanta to Mobile, and we give them the published rate, which is the interstate rate, they say there are all sorts of combinations by which it can be defeated, isn't there, "we have heard of that." The ticket agent says "Yes, but we are not allowed to sell you a ticket." The passengers are better educated on these rates than the average rate man today.

[fol. 1538] Q. Now, let's see if I understand what you say. Do you go into the ticket office yourself?

A. Yes, I make it a common practice. It is a daily habit of mine to go over there and sit down after lunch from 1 o'clock to sometimes 2, 2:30 or 3 o'clock.

Q. When you are sitting there, do you hear it?

A. I hear these inquiries.

Q. You hear the inquiries?

A. Yes, they all try to get a certain rate going to Mobile or Montgomery or somewhere else, where Alabama is involved, or some other points, and they will use these combinations and say "I can buy to Lanett"; or "Buy to West Point or Opelika, and re-buy to Montgomery, and then re-buy".

Q. The passengers actually say that? They are actually passengers?

A. They are, they say that. Some of them are the best educated men in the country, I'm telling you. They can use combinations that will make you open your eyes.

Q. You have had considerable experience in passenger traffic matters, haven't you?

A. I have, for many years.

Q. Do you know any reason why the intrastate fare within the State of Alabama should be less than the interstate coach fare from a point in Alabama to a point in an adjoining State?

A. I do not, because, we all know that the philosophy of [fol. 1539] the Interstate Commerce Commission has always been non-discrimination.

Mr. Reynolds: I will ask, Mr. Examiner, that Exhibits 11 to 14 be received in evidence. I have not asked the witness to explain them. They are just like prior Exhibits. Unless somebody wants to ask something about them, I think they speak for themselves.

Mr. Bruce: Before they are received I wish to enter the same objection.

Examiner Stiles: The objection goes only to 12, 13, and 14, I take it?

Mr. Reynolds: Let me point out that while we agree with your ruling, Mr. Examiner, that the objection is untenable, this witness has given actual instances where a passenger has come into the station while he was there in the ticket office and they have told the ticket agent that the lower intrastate fare, coach fare within Alabama, enabled them to defeat the through interstate fares.

Mr. White: I don't think the witness though has stated—maybe I am testifying as Counsel is testifying—that he knows where any of these supposed passengers have actually defeated the interstate rate.

The Witness: The natural assumption, Mr. Chairman, would be a man that is acquainted with any possible com-

bination would certainly not sit down and not avail themselves of it, where they can save from 90 cents to two or three dollars.

[fol. 1540]

Mr. White: He might be a law abiding citizen, he might not want to defeat it.

Mr. Reynolds: The Alabama Commission ought not to give him the incentive to violate the law by making fares in Alabama lower than the interstate fares.

Examiner Stiles: Exhibits 11 to 14, inclusive, are received in evidence.

(Exhibits Nos. 11 to 14, inclusive, witness Higgins, received in evidence.)

Examiner Stiles: Are there any further questions, Mr. Reynolds?

Mr. Reynolds: I have no further questions.

Examiner Stiles: Cross-examine.

Cross-examination.

By Mr. Bruce:

Q. Mr. Higgins, where is this station that you visit all the time?

A. Atlanta, Georgia, joint ticket office, Atlanta, which serves the Central of Georgia, the Atlanta-Birmingham and Atlantic, the L&N, NC&StL, and Georgia railroads.

Q. You hear that? Where do you sit? Do you listen to all of the clerks?

A. I didn't say clerks, I listen to the passengers, because today it is a very interesting study, to go in there and see the number of passengers trying to travel and to purchase tickets. We have a settee on the side.

[fol. 1541]

Q. It is unusual to have that many passengers; you have only had that many passengers for the last year or so, is that right?

A. That is right.

Q. Has any one ever complained to you about discrimination against them?

A. Yes; some of them, that is those educated, and the traveling man that has got common sense and intelligence, it does look damn cheap to come in there and have to pay so much interstate, when they can go down in Alabama and get some cheaper rate.

Q. Do any of these so-called traveling men that you have listened to ever complain about the 2 cents first class fare in Georgia?

A. Complain?

Q. Yes.

A. No, they have not complained about the 2 cents fare. That is not in issue now.

Q. There is a 2 cent fare at the present time in Georgia?

A. Yes.

Q. That applies on first class fares within Georgia?

A. First class, yes, sir, 2.2.

Q. 2.2?

A. Yes, sir.

Q. Has anybody ever complained to you about that?

A. No.

Q. They just complained to you about the Alabama [fol. 1542] situation in Atlanta, is that right?

A. They complain of the fact that the combination of rates is much less than the through published rate. And the unfortunate part about the whole situation, as you must realize, is the non-uniformity. If we had a uniform rate from "A" to "B" and from "C" to "D", there wouldn't be any complaints, we wouldn't be here today.

Q. You don't mean to say that the Atlanta office is selling that kind of a ticket, are you?

A. No, they are not allowed to sell a ticket on unlike fares.

Q. Would the same thing apply in buying a ticket from some point in Alabama to a border point in Georgia? Could you not buy a combination on the trip there, can't you buy a Georgia intrastate ticket that would defeat the first class rates?

A. Certainly. What is workable in one direction is bound to be workable in the opposite directions, as between two given points.

Q. The first class passengers do not complain about that?

A. No.

Q. Can you name anybody that has made this complaint to you?

A. Name them? No. They don't have to make a complaint. The natural observation indicates what is in the

mind of the passengers, and that is to beat a through rate.

Q. They could defeat the through rate——

A. Certainly.

[fol. 1543] Q. You have had no complaints whatsoever made against the situation?

A. No, not any specific complaint against Alabama rates at all.

Q. What they are trying to do is to avail themselves of the low fares?

A. Of the combination.

Mr. Bruce: That is all I have. Mr. Examiner, I don't know whether the record shows it, but I have entered the same objection. I think I made the same objection against Exhibits 12 to 14, inclusive.

Mr. Miller: One question.

By Mr. Miller:

Q. In your observation of these passengers who talk with the ticket agent concerning these combinations, is it your observation that they eventually buy a through ticket at the interstate rate, or simply buy——

A. They use the combination.

Q. They use the combination?

A. Yes.

Mr. Bruce: They don't buy a ticket?

The Witness: No, they don't buy a ticket. Naturally, he is going to buy at the combination, they are not going to pay the interstate fare when they can get a combination. If you have a pair of shoes for $6.75 and a man across the street has a pair for $5.75, which one are you going to buy,—the shoes are of the same quality.

[fol. 1544] Mr. Bruce: You are on the witness stand. You tell them which one you would buy.

The Witness: You know what one I would buy.

Redirect examination.

By Mr. Reynolds:

Q. Let me ask you this. Do you mean to say that when you are in the passenger station there at Atlanta——

A. Joint ticket office. Get it right.

Q. Joint ticket office, excuse me, a passenger comes in and asks what the fare is from Atlanta to Mobile?

A. Yes, sir, or any other point in Alabama.

Q. Take that as an example, going west, then instead of buying from Atlanta to Mobile, he will buy from Atlanta to Opelika, we will say?

A. We will say to West Point, he will buy to West Point at the coach rate, 1.65. He will skip West Point to Lanett, which is a distance of about three-quarters of a mile. The conductor will come along and naturally collect his fare. The Alabama fare is 1.65, the same as Georgia. You have the two component parts making a through rate, but not a ticket is sold at that through rate.

Q. This passenger does not buy a through ticket from Atlanta to Mobile?

A. No, sir, he buys to West Point.

Q. All right.

A. He does that because he wants to get through the gate [fol. 1545] on the train.

Mr. White: Do all of your trains stop at Lanett?

The Witness: No, sir, not now, they used to.

Mr. White: How many of them now do not stop at Lanett at all?

The Witness: None of them stop there.

Mr. White: None of them stop at Lanett?

The Witness: No, but he can flag, or he can pay the conductor from Lanett down.

Now, Mr. Chairman, you know as well as I do, that with the crowded trains, the conductor, a man gets on at West Point, and after receiving his orders, the conductor has been there five or six minutes, he comes on into Montgomery, and it takes a long time to start at the front and go back to the rear. In the meantime, that man can say "I got on in Lanett".

Mr. Bruce: How do you know that?

Mr. Reynolds: Answer President White's question.

Mr. White: If your conductor knows the train didn't stop at Lanett, and started from West Point, coming on to Montgomery and to Mobile, he wouldn't sell him a ticket from Lanett, would he?

The Witness: No.

Mr. White: To Mobile?

The Witness: No, but if he said he got on at Lanett, and perhaps Lanett—he may have stopped, he couldn't [fol. 1546] charge any more than the agent's rate at a non-stop point.

Mr. White: I thought you just testified——

The Witness: We will eliminate that.

Mr. White: —that the train didn't stop at Lanett.

The Witness: They don't stop at Lanett. Let's go back to West Point, using the same argument. By the time he got from the head of the train going back to West Point, he would say "I didn't have time to buy that ticket at West Point".

Mr. White: If he bought a ticket from West Point, Georgia to Mobile, Alabama, he would pay the interstate rate?

The Witness: Interstate fare, yes, sir.

By Mr. Reynolds:

Q. All of your trains do stop at Opelika though, don't they?

A. Oh, yes.

Q. And he could buy to Opelika and re-buy from Opelika?

A. That's right.

Recross-examination.

By Mr. Bruce:

Q. How do you know that these passengers do that? How do you know they perform this operation that you claim of buying a ticket at West Point or Lanett?

A. How do we know that?

Q. Yes.

A. We know from common intelligence, where the possibility is there, it is going to be effective. You know, when people are traveling they translate or transmit to each [fol. 1547] other the experience by which they can defeat the railroad rules.

Q. Is that a conception of yours that they do that, but you don't know?

A. It is not only my conception. If it was, I would probably make some money out of it, I would inaugurate a plan.

Q. Do you personally know that they do that, have you seen anybody that did that?

A. I have been told by the conductors that they do that.

Q. You have been told that?

A. Yes. I know you say "hearsay evidence", you say that isn't so, but it is practicable, anyhow, it is practicable.

Mr. Bruce: All right.

Mr. Reynolds: All right, that is all.

Examiner Stiles: You are excused.

(Witness excused.)

P. E. Geil was sworn and testified as follows:

Direct examination.

By Mr. Lott:

Q. Where do you live and what is your business?

A. I live at Mobile, Alabama. I am passenger traffic manager for the Gulf, Mobile and Ohio Railroad.

Q. Briefly relate your experience in the transportation business, Mr. Geil.

A. I have been in the traffic department of the old M&O. [fol. 1548] and the present company, the Gulf, Mobile and Ohio, for the past 23 years. For approximately the past two and a half years I have been in the passenger department exclusively.

Q. Will you please describe the line of the Gulf, Mobile and Ohio Railroad Company in the State of Alabama over which you operate a passenger train?

A. The GM&O operates passenger service over two lines in the State of Alabama, one extending from Montgomery to the Mississippi State line via Tuscaloosa, Alabama; the other extending from Mobile, Alabama, to the Mississippi State line via Citronelle, the Atlanta line is our main line from Mobile to St. Louis.

Q. What is the distance from Mobile to the Mississippi-Alabama State line north of Citronelle?

A. Approximately 60 miles.

Q. What is the distance from Montgomery via the GM&O through Tuscaloosa to the Mississippo-Alabama State line near Columbus, Mississippi?

A. 158 miles.

Q. Mr. Geil, how many passenger trains are operated between Mobile and the Mississippi-Alabama State line via Citronelle?

A. Two trains, one in each direction daily between Mobile, the southern terminus, and St. Louis, Missouri, the northern terminus, via Citronelle.

Q. What kind of train or equipment is regularly as-
[fol. 1549] signed to these passenger trains?

A. Diesel powered streamline equipment, with air conditioned coaches, all steel, individual reclining seats, buffet and dining car service.

Q. Do you have lounge accommodations for coach passengers?

A. Yes, sir. Coaches have lounge accommodations, magazines——

Q. Free for the passengers?

A. Yes, sir.

Q. Are there any cars regularly assigned to these trains which are I believe numbered 15 and 16 which are not air conditioned?

A. No, sir, all regularly assigned equipment on these particular trains are air conditioned coaches.

Q. How many stops do these trains numbered 15 and 16 make in the State of Alabama over the distance of 50 miles between Mobile and Mississippi-Alabama State line?

A. There are five scheduled stops, two of which are flag, and in addition, on Thursday of each week we stop these trains at Oak Grove, Alabama, for the convenience of the people living in that community going to Mobile for their shopping. It so happens that Oak Grove is off the highway, and they don't have available bus service. By a special agreement we arranged to stop these trains on Thursday of each week there.

Q. That is at the request of citizens of Oak Grove?

A. That is right.

Q. Coming over to the Montgomery division line, what
[fol. 1550] passenger service is provided by your company between Montgomery and the Mississippi-Alabama State line, near Columbus, Mississippi?

A. We operate one train daily in each direction between the Mississippi State line, which originates at Artesia, Mississippi, the junction with the main line, and Montgomery, via Tuscaloosa. This train is a gas-electric motor

train, with coach accommodations, a part of the motor car being used for passenger space, and an additional air conditioned all steel coach, with reclining seats and buffet, in the extra coach.

Q. That is an air conditioned car?

A. Yes, sir.

Q. What are the numbers of those trains?

A. Those trains are Nos. 115 and 116.

Mr. Bruce: Both of these are interstate trains, are they not, they are not local trains in Alabama? They offer local service?

Mr. Lott: I will ask the witness.

By Mr. Lott:

Q. Mr. Geil, are these trains that you have just referred to, Nos. 115 and 116,—are they not?

A. Yes, sir.

Q. They originate at a point just west of the Mississippi-Alabama State line and terminate at Montgomery in the State of Alabama?

A. Yes, sir, that is right.

Q. They handle both interstate and intrastate passengers?

[fol. 1551] A. Yes, sir, predominantly intrastate, however.

Q. Do you provide any other passenger train service on the so-called Montgomery district?

A. Yes, sir, in addition to trains 115 and 116 we operate trains 109 and 110 which are local trains between Tuscaloosa and Montgomery, Alabama.

Q. What is that distance please?

A. That distance is 107 miles.

Q. What equipment is regularly assigned to that local train which operates solely within the State of Alabama?

A. All steel coaches, air conditioned, individual reclining seats.

Q. That is a gas-electric train, is it?

A. Yes, sir.

Q. Does it make frequent stops?

A. It stops everywhere a passenger might care to get on.

Q. What are the numbers of those trains?

A. 109 and 110.

Q. Do trains 109 and 110 handle intrastate passengers exclusively, or do they also handle interstate passengers?

A. They handle both interstate and intrastate.

Q. By virtue of your position as passenger traffic manager, do you have occasion to investigate the load factors of your various trains to determine whether there is sufficient equipment provided for passengers who care to use the trains?

[fol. 1552] A. Yes, sir.

Q. What has been your observation with respect to the crowded conditions, if any, in your passenger trains operated between points in the State of Alabama?

A. On the Montgomery district it is very seldom any one has to stand, with the possible exception of week ends, we do stand them once in a while.

On those days, if we know we are going to have a heavy crowd, why we attach an additional coach. We have an additional coach standing by at Montgomery, and one at Tuscaloosa. But we have not experienced any over-crowded conditions on this division over here. To my knowledge we have never left a passenger at a station, nor had any complaint about standing.

Q. How about the line extending out of Mobile, your train Nos. 15 and 16?

A. With the exception of an occasional week end, seats are always available for the local intrastate passengers. But on week ends we operate one and as many as three or four extra coaches, depending on an anticipated traffic. Usually we have been able to seat most of the passengers; I would say, over holiday periods we stand them, but that applies to interstate as well as intrastate.

Q. So that intrastate passengers in Alabama have substantially the same facilities as interstate passengers?

A. Yes, sir, they have the benefit of air conditioned equip-
[fol. 1553] ment, reclining seats, meal service, buffet service on all coach trains, and we have hostesses on the main line trains Nos. 15 and 16.

Q. Mr. Geil, witness Aiken testified that the Gulf, Mobile and Ohio was one of the several railroads who are respondent in this proceeding which are maintaining the regular 2 cents per mile fare for coaches for intrastate application in Alabama. Is that statement correct?

A. Yes, sir.

Q. That 2 cent basic fare has the 10 per cent increase attached to it?

A. Yes, sir.

Q. Have you prepared a statement showing the present basic passenger fares between points on the G. M. & O. in Alabama, one-way round trip coach, and first class?

A. Yes, sir.

Mr. Lott: I will ask this Exhibit be marked for identification Exhibit No. 15.

Examiner Stiles: The Reporter will so mark it.

(Exhibit No. 15, witness Geil, marked for identification.)

By Mr. Lott:

Q. Mr. Geil, will you make such explanation as you care to make of Exhibit No. 15?

A. This Exhibit indicates that so far as the Gulf, Mobile and Ohio Railroad is concerned, in this proceeding our interests run only to the round trip coach and first class fares, [fol. 1554] our one-way fares intrastate in Alabama being now on a basis of 2.2 cents per mile, the same as interstate fares.

It indicates that we propose to increase our Alabama intrastate coach basis round-trip from 1.65 cents per mile to 1.98 cents per mile; and the round-trip first class fares from 2.475 to 2.75 cents per mile.

It also shows intrastate in the State of Mississippi, which is the neighboring State to the west, the basic fares of the Gulf, Mobile and Ohio Railroad are on the interstate basis.

Q. Is that by virtue of the authority or approval of any regulatory body in Mississippi?

A. Yes, sir. Prior to the adoption of this interstate basis on intrastate traffic in Mississippi, a petition was duly filed with the Mississippi Public Service Commission, and after a hearing approved.

Q. This 2.2 cents one-way coach fare has been the basic fare within Alabama on your railroad for some months, has it not?

A. For a good many years, or rather I should say since the 10 per cent increase, general 10 per cent increase. But the basis of 2 cents per mile was in effect for a good many years prior to that time.

Q. Have you received any complaints from Alabama citizens or travelers as to the 2.2 intrastate rate which is in effect on your line?

A. No, sir, no such complaints have come to my attention.

[fol. 1555] Q. Mr. Geil, have you prepared or made a study and prepared a statement showing the examples of advantage and preference and prejudice as between persons in interstate and intrastate commerce in Alabama, as it affects your line?

A. I have.

Mr. Lott: I will ask that this statement just referred to be marked for identification as Exhibit No. 16.

Examiner Stiles: It will be identified as Exhibit No. 16 by the Reporter.

(Exhibit No. 16, witness Geil, marked for identification.)

By Mr. Lott:

Q. The first two examples on your Exhibit 16 refer to the situation on the Montgomery district, and the third and four Exhibits refer to the situation on the line extending out of Mobile, do they not?

A. Yes, sir.

Q. And you have heard the testimony of other witnesses who presented similar statements earlier in this hearing?

A. Yes, sir.

Q. Was this Exhibit prepared for the same purpose, and are these examples similar to those given by previous witnesses?

A. They are.

Q. Do you have anything to add to the previous testimony with respect to the statements of this kind?

A. No, sir.

Mr. Lott: All right.

[fol. 1556] Mr. Bruce: Mr. Counsel, the first example would not apply to your line in Alabama, would it, from the fact that you have a 2 cent fare in Alabama?

Mr. Lott: You see, the only manner in which the GM&O is affected by this proceeding is the increase in the round-trip fare.

Mr. Bruce: It would not apply one-way?

Mr. Lott: That is right.

By Mr. Lott:

Q. Your Exhibit 16 indicates, or, of course, refers to round-trip coach fares only?

A. I should have explained that the abbreviation "RT Coach Fare" is intended to mean "Round-trip coach fares".

Q. Mr. Geil, have there come to your attention any instances where passengers have indulged in the practice of re-buying tickets within Alabama, round-trip tickets within Alabama, in order to defeat a through round-trip rate from a point outside of Alabama to a point in Alabama?

A. I have heard it said previously that that practice was being indulged in, but it was not until just today that we had an occasion to actually make a direct investigation. We inquired of the train conductor coming in on train 115 this morning if to his knowledge any one had ever been brought in from Mississippi and re-bought a ticket to Montgomery at some point on the route of 115, in order to defeat the through fare, and he says that he knows of a number of cases where passengers have gotten off the train coming [fol. 1557] in from Columbus and points west, gotten off the train at Tuscaloosa, where there is usually a wait of about five or ten minutes, unloading and loading express and mail, and have actually gone into the depot and repurchased tickets to Montgomery.

Q. Do your passenger trains stop up close to the ticket office at the station at Tuscaloosa?

A. Yes, sir, within I would say 30 feet of the ticket window.

Q. Is your station at Tuscaloosa used solely by the GM&O?

A. Yes, sir.

Q. And you are not obsessed with long lines of passengers waiting for tickets at that particular station, are you?

A. No, sir.

Q. It would be, as a practical matter, possible for a passenger to get off the train at Tuscaloosa, go in and buy his ticket, and come back and get his seat without any difficulty?

A. Yes, sir, and I can understand why they would do it. For example, from Columbus, Mississippi, to Montgomery, Alabama, the through interstate round-trip fare on basis of 1.98 cents per mile is $6.65. The round-trip fare interstate from Columbus to Tuscaloosa is $2.50. The round-trip fare from Tuscaloosa to Montgomery intrastate is $3.30, a total of $5.80, compared with the through interstate fare of $6.65, or a saving of 85 cents.

And I know from my experience in passenger traffic work, [fol. 1558] and in the bus business, happening to be passenger traffic man of our Gulf Transport Company, our highway bus subsidiary, that local passengers quickly learn of

any opportunity or subterfuge to save money through the purchase of tickets. And I would not doubt but what there are a good many passengers coming from beyond the State of Alabama going to Montgomery that know of this situation and take advantage of the opportunity to re-buy at Tuscaloosa.

Q. Do you agree with Mr. Higgins that once these situations are discovered that the traveling public quickly are acquainted with it?

A. Yes, sir.

Q. To your own personal knowledge do you know of any other instances along your line where this re-buying privilege is carried on to defeat the through interstate rate?

A. Not in the State of Alabama, but I can state an exact case, a concrete case, and can substantiate the record with the correspondence. We had three passengers traveling from Philadelphia, Mississippi, to New Orleans, Louisiana, to attend the Sugar Bowl game.

Mr. Bruce: I object to that, that has nothing to do with this case.

The Witness: It illustrates how it can be done, how a through fare can be defeated.

Examiner Stiles: You are about to state how it has been [fol. 1559] done in the State of Mississippi.

The Witness: From Philadelphia, Mississippi, to New Orleans, an interstate case.

Mr. Bruce: I object, Mr. Examiner.

Examiner Stiles: The objection is sustained.

Mr. Lott: I have no further questions. I ask that Exhibits 15 and 16 be received in evidence.

Examiner Stiles: Those Exhibits are received in evidence.

(Exhibits Nos. 15 and 16, witness Geil, received in evidence.)

Exainmer Stiles: Cross examine.

Cross-examination.

By Mr. White:

Q. I would like to ask you this question: Was your one-way coach fare prior to the 10 per cent first increase granted in Ex Parte 148, which was also granted by the Alabama Commission, was your coach fare intrastate in

Alabama as well as interstate, has that been 2 cents since the '36 passenger fare case?

A. Yes, sir. We have not at any time on this line reduced our fares to the basis of 1.5 cents a mile, except on our Louisiana division, but not in the State of Alabama, or interstate.

Mr. White: I thought that was correct. That is all I have.

Mr. Lott: Thank you sir.

[fol. 1560] Examiner Stiles: You are excused.

Mr. Bruce: Just a minute. I just asked the Examiner whether I could ask a few questions.

By Mr. Bruce:

Q. Have you ever seen any one personally buy a ticket in which the interstate fare was defeated by applying the combination, or I mean by using the subterfuge, or whatever you call it, of buying a ticket from Mississippi to a point in Alabama, and from a point in Alabama to another point in Alabama?

A. I have not personally, no, sir.

Q. Have your employees ever stated an individual's name that has done that?

A. No, sir, the first direct inquiry we have made is today, and we didn't have time, the conductor left at 3 o'clock today. We didn't get any specific names, and I doubt seriously if he could give names.

Q. You didn't ask the conductor if he could give you names?

A. No.

Q. Have you ever instructed your ticket agent at Tuscaloosa not to sell that class of ticket?

A. I don't recall that we have put out any specific instructions in writing up to this time, but as a result of our disclosure today I intend to do so.

Q. Your lines is in need of money, is it not?

A. Yes, sir, and with particular reference to passenger traffic.

[fol. 1561] Q. Don't you think you as a general officer of the Gulf, Mobile and Ohio have been remiss in your duties, in not instructing your agents accordingly, that they should refuse to supply that class of ticket, from the fact it is unlawful, and that you are losing revenue thereby?

A. Our agents do not sell such tickets, and they have no knowledge that the passenger has originated outside of the State. A passenger gets off the train and runs in; the ticket agent has no chance of knowing that passenger came in on the train unless the conductor ran out behind him and identified him and told him not to sell him a ticket, that he had just come in on that train.

Q. You stated that the traveling public soon got on to such combinations of saving money. What class of passengers were you talking about at that time, occasional passengers, or regular travel?

A. Take any passenger, the average passenger doesn't know the law, doesn't know that is prohibited by the law. If he sees an opportunity to save 50 cents or a dollar, he is going to do it. You and I would too, if we were not versed in the laws of the Interstate Commerce Commission and knew that it is unlawful to do that.

Q. I think you misunderstand me.

A. It is human nature.

Q. I asked you in your experience as a passenger ticket [fol. 1562] agent and general officer of the Gulf, Mobile and Northern whether it is your experience that the general run of passengers would know any such thing about fares?

A. No, sir, they are local passengers, people who travel frequently between points like Columbus and Montgomery, who soon get wind of it. They ride together and hear about one person doing it, and they figure it out for themselves. Then before long they know it. I started to tell you a darn good case, but you wouldn't let me.

Q. Tell me that case.

A. You would like to hear it.

Q. Yes.

Mr. Lott: Mr. Examiner, Mr. Bruce has asked about this situation that he objected to a minute ago.

Mr. Bruce: Well, I didn't mean that.

Mr. Lott: Are you going ahead?

Mr. Bruce: I thought you meant some case in Alabama.

The Witness: No.

Mr. Bruce: My objection is based on the fact Mississippi rates are not involved here.

Mr. Reynolds: Georgia isn't either.

Mr. Bruce: I am going to ask this question now:

By Mr. Bruce:

Q. You don't know of any like example in Alabama, do you, or do you?

A. It is theoretical, and can be practiced. We are not [fol. 1563] going to learn of it, except by accident. People are not going to tell you they are doing that.

Q. I am still going to ask you the same question: Do you know whether it is practiced, yourself personally, and do you know of any example?

A. Only in the case I just mentioned, where we inquired of our conductor this morning. We came in on train 115, and he said to his own personal knowledge he does know that has been done.

Q. All right. You should instruct your conductors about that.

A. We propose to do that, Mr. Bruce.

Q. You have learned something in this hearing anyhow, haven't you? Now, about your 2.2 cents fare, applying at the present time, a one-way movement in Alabama. Why have you not decreased your fare in like proportion to other lines in Alabama?

A. That is a matter of judgment. Our company did not feel that the reduction to that basis would cure our ills.

We did not feel that the loss in revenue due to that reduction would be more than offset by increased patronage. And moreover we had a competitive situation, as I believe Mr. Aiken testified over in the Mississippi Valley, and through St. Louis, to New Orleans. To have reduced our fares to that basis would have played havoc with our revenue, and we just didn't feel it was justified.

Q. It placed you in a position that if any one had com- [fol. 1564] plained about your fares it might have been prejudice on other parts of your system?

A. No, sir, we applied it intentionally over our entire system uniformly.

Q. I mean if you had made a reduction?

A. No, sir; we did meet competitive rates, for instance, from St. Louis to Mobile, Alabama. The L&N by its circuitous route made the coach rate on the basis of 1.5 cents per mile. We met that over our direct route, and held it as a maximum until it failed to cut the 2 cents per mile.

Q. You met the situation with regard to the movement of passengers between St. Louis and points in Alabama

where you had a competitive situation, but you did not meet the situation on intrastate commerce in Alabama, is that right?

A. We had no competitive situation.

Q. In Alabama?

A. In Alabama.

Q. In other words, you would get the business whether you had any reduced rates or not, would you?

A. Unfortunately the bus lines and the private automobiles got the business. We are just now getting a little bit of it back.

Q. You are the passenger traffic manager of the Gulf Transport, are you not?

A. Yes.

Q. Do they propose to raise the rates between Tuscaloosa [fol. 1565] or between other points in Alabama?

A. The Gulf Transport Company, I might add for your information, so far as the bus operation is concerned, operates only between Mobile, Alabama, and the Mississippi State line via Semmes and Wilmer, Alabama. It does not operate over any highways paralleling the rail lines over which we operate rail passenger service today in Mississippi.

Mr. Lott: You mean the State of Alabama?

The Witness: The State of Alabama.

By Mr. Bruce:

Q. Do you propose to increase your motor bus fare between points in Alabama?

A. We do not by this proceeding. Our general basis of bus fares between points on Gulf Transport Company's line is the rail fare, but not to exceed competitive bus fares. We try to maintain for the purpose of our interchange arrangement, under which we handle rail tickets on buses, and bus tickets on trains, we try to maintain the same basis of rates. But where we meet a competitive situation, we cut the rail basis for bus movement to competitive bus fares.

Q. Do you have any bus fares at the present time which are lower than the rail rate that you mentioned of 2.2?

A. Not in the State of Alabama.

Q. Are the bus rates lower than the 2.2?

A. In the State of Alabama Gulf Transport's bus rates are identical with the rail rates, 2.2 cents a mile.

[fol. 1566] Q. Excepting where you meet competition?

A. We don't have any competitive situations on the buses in Alabama.

Q. Do you propose to leave these fares at present, at the present level on the Gulf Transport?

A. We already have the 2.2 cent a mile fare on Gulf Transport one-way. On round-trips we have 1.65. We have not initiated any proceedings to increase our round-trip bus fare.

Q. Therefore, these round-trip bus fares will be lower than the round-trip rail fare?

A. There is no rail service on that line.

Q. But if there was rail service for an equal distance? For an equal distance on the Gulf, Mobile and Ohio, as far as rail is concerned, you have an existing rate you say of 2.2. What is the round-trip?

A. 1.65.

Q. That applies equally to your bus operations?

A. In Alabama, yes, sir.

Q. You don't propose to raise the bus operation fares, is that right?

A. Should we be permitted to increase our rail round-trip coach fares, we will take proper action to increase round-trip bus fares.

Q. You haven't done that yet, or you haven't consulted your competition?

[fol. 1567] A. We don't have any competition on our bus line in Alabama, and we would act independently of other bus schedules. Regardless of whether other bus lines in Alabama made this increase or applied to this Commission to increase their fares, we would still endeavor to elevate our round-trip bus fares to the rail basis, but there are just about 27 miles involved, so it is not really worthwhile discussing.

Q. Just 27 miles?

A. We run buses all the way from Mobile to St. Louis, but up a different line of railroad. We have a line to Jackson, Tennesssee, and the bus route follows the East Line.

Q. You don't operate any rail service, rail passenger service into Birmingham, do you?

A. No sir, we have connections into Birmingham through Meridian and Tupelo.

Q. But you do furnish freight transportation service into Birmingham?

A. We have a line by trackage agreement, and we operate freight service into Birmingham proper up through Corinth, Mississippi.

Q. Have you ever received any complaint from any one in the State of Mississippi or any other States with reference to the existing coach fares in the State of Alabama, between points in Alabama?

A. Well, we have not to my knowledge, but in normal [fol. 1568] times we certainly would be getting a lot of them, People just haven't got time to worry about them now.

Q. But you have not received any complaints?

A. No sir.

Mr. Bruce: That is all I have. Thank you.

Examiner Stiles: Mr. Geil, referring to the testimony you gave with reference to what the conductor told you coming in this morning, you said in answer to a question by Mr. Bruce that you were going to instruct your trainmen. What could you do in that case? Is there anything you can do?

The Witness: Yes sir.

Examiner Stiles: Can you tell them you refuse to accept the ticket that the passenger has bought after he has stopped at the intermediate points?

The Witness: Yes sir. I contemplate issuing instructions to that conductor that if he can identify that passenger as having come in on that train, to require him to pay the full interstate fare from a point that he boarded the train to his destination, otherwise to put him off the train, and I think we can do it.

Mr. Lott: Off the record.

(Discussion had off the record.)

The Witness: We will at least make a conscientious effort to police it and stop it. We haven't got so much business at Tuscaloosa that we cannot in a measure identify or [fol. 1569] segregate those passengers. The conductor evidently has not done anything about it because he has not been instructed, and he probably didn't even know himself that it was unlawful, but we do propose to do something about it. Mr. Lott says maybe I contemplate going too far, but I personally feel that we can do it. If we know he is in

continuous interstate commerce, I don't see how we would be justified in doing other than to require him to pay the fare.

Examiner Stiles: You are excused.

(Witness excused.)

Examiner Stiles: Do you have another witness?

Mr. Oliver: The railroads have two more witnesses, an operating witness and an accounting and statistical witness. What is your pleasure about the adjournment hour?

Mr. Bruce: I have a lot of questions to ask both these witnesses.

Examiner Stiles: I didn't hear you?

Mr. Bruce: I say I am much in favor of adjourning.

Examiner Stiles: Off the record.

(Discussion was had off the record.)

Examiner Stiles: We will adjourn until 9:30 tomorrow morning.

(At 5:15 o'clock, p. m., June 28, 1943, a recess was taken until 9:30 o'clock, a. m., June 29, 1943.)

[fol. 1570] Offices of Alabama Public Service Commission, Montgomery, Alabama

Tuesday, June 29, 1943

Before C. E. Stiles, trial Examiner.

Hearing resumed at 9:30 a. m.

Appearances: As heretofore noted.

Proceedings

Examiner Stiles: Let's come to order. Carriers may call their next witness.

Mr. Oliver: Come around, Mr. Simpson.

Walter W. Simpson was sworn and testified as follows:

Direct examination.

By Mr. Oliver:

Q. State your name, residence and occupation?

A. Walter W. Simpson, 4009 8th Court South, Birmingham, Alabama, Superintendent, Southern Railway, Birmingham Division.

Q. How long have you held your present position, and what positions have you previously held in the operating department of the Southern Railway System Lines?

A. I became superintendent of the Birmingham Division on February 22, 1942. Since entering the service in Feb- [fol. 1571] ruary, 1914, I have served as clerk, chief claim dispatcher, inspector of transportation, terminal trainmaster, trainmaster and division superintendent of two divisions prior to Birmingham.

Q. One of those other divisions is in Alabama?

A. The Mobile Division, yes, sir.

Q. Over what lines do you now have immediate supervision?

A. From Austell, Georgia, to Columbus, Mississippi, and from Parrish, Alabama, to Sheffield, Alabama, and also the terminals in Birmingham.

Q. Now, the line that you speak of from Austell to Columbus crosses the state of Alabama, doesn't it?

A. Yes, about in the vicinity of Tallapoosa.

Q. What other lines do Southern Railway Systems operate in the state of Alabama?

A. The Alabama Great Southern.

Q. Well, now, what is the line of the Alabama Great Southern?

A. The line of the Alabama Great Southern extends from Chattanooga to Meridian.

Q. Through Birmingham?

A. Through Birmingham, yes, sir.

Q. Now, then, what other lines besides the Alabama Great Southern and the lines over which you have jurisdiction are operated by the Southern Railway Company in the state of Alabama?

A. The Memphis Division extending from Chattanooga [fol. 1572] to Memphis has a mileage in the state of Alabama, and then there is a line from Attalla to Rome that is operated by the Atlanta Division. That has mileage in Alabama. And the Mobile Division is practically all in Alabama, except for a short distance.

Q. When you speak of the Mobile Division, just what is that?

A. The Mobile Division extends from Birmingham to Mobile, and they have a line from Selma to Rome, Georgia, one from Selma to Akron, and one from Selma to York.

Q. Then there is a line, isn't there that comes in from Meridian, across through York?

A. I included that in the Selma to York line.

Q. That is included?

A. That connects with the Alabama Great Southern at York.

Q. Approximately how much mileage does Southern Railway Company and the Alabama Great Southern operate within the state of Alabama?

A. The Southern Railway Company operates 1,065 miles, and the Alabama Great Southern operates 261 miles; there are 1326 miles of the system in the State of Alabama, total.

Q. Are Southern Railway, or Southern Railway System Lines I should say, and the other Alabama lines confronted with any unusual difficulties and expenses in connection with passenger operations under present day conditions?

A. Yes.

[fol. 1573] Examiner Stiles: The Southern System operates, I take it, more miles of railroad in Alabama than any other area?

The Witness: That is true.

Examiner Stiles: Would the L. & N. be next?

The Witness: Sir?

Examiner Stiles: Would the L. & N. be next?

The Witness: I would say that the L. & N. would come next.

Mr. Oliver: We will give you those mileages, Mr. Examiner, by a later witness who has them for each Alabama line.

Examiner Stiles: Thank you.

Mr. Oliver: He has them accurately.

By Mr. Oliver:

Q. Now, you say that the roads are confronted with difficulties and additional expenses under present day operating conditions?

A. Yes, sir.

Q. Will you amplify that answer, please, sir?

A. Well, the heavy increase in civilian travel has made it necessary to operate trains in sections, that formerly we did not have to operate, and we have had to increase our

train forces. We have had to put on practically all of our trains a helper to the conductor, to help lift the transportation.

We have had to put additional train employees on trains to help load and unload the passengers.

We have in lots of cases more than doubled our forces in the ticket offices, and we have to split our train dis- [fol. 1574] patching districts on account of the increased number of trains operated. The train dispatchers were not able to cover the whole territory that they had been covering. We had to put on extra sets of train dispatchers to split the territory up so that they could properly handle the train movements.

The heavy drain on the equipment of course requires the doubling of equipment back, and necessarily there is an unusual amount of switching in the yards in connection with it. Formerly the train would come in and lay over until the next day when it went out again. We have to grab that equipment and send it all ways now, and just figure on something coming in later to take the train out next day. That increases your terminal expense.

Q. Now, you spoke of operating trains in two sections. Is it more expensive per train to operate in two sections than it would be just to operate one train?

A. Well, that goes to make up more train units, of course, on your division, and naturally the more unit- you have, why, the more delays you are going to have to opposing trains.

Q. Do you have a limit as to the number of cars operated in a passenger train?

A. Well, there is always a limit to the capacity of the locomotive that might be assigned to it, and when you get over that limit, why, you have to make other arrangements.

Q. Now, suppose you had a train that normally operated, [fol. 1575] say, with 12 to 14 cars, and you put on four additional cars. Would you operate an additional section by reason of that?

A. You would have to. On my particular division between Birmingham and Atlanta, where we have our heaviest train operation, if we have over 14 cars we doublehead and over 16 we make two sections. If we have 17 cars we split it up.

Q. Then if you operate 17 cars in two sections, that would naturally increase your unit cost per car, would it not?

A. That is right.

Q. You would have two full crews for each—I mean a full crew for each train?

A. That's right.

Q. Now, you have been dealing, I take it, primarily or entirely in your answers with the normal or the civilian business, so to speak?

A. Yes.

Q. Do you encounter any unusual difficulties in handling troop movements?

A. Yes, we do. There is always more or less additional miles that has to be made in order to get your equipment in place and get it disposed of after it has served its use as troop trains, and the troop trains, of course, have to be given more or less preference over other movements.

Q. Are you speaking of deadhead movements now when you speak of assembling and getting the cars back?

[fol. 1576] A. Well, yes, deadhead movements, on which there is no revenue involved, but to the contrary we use foreign equipment lots of times, and have to naturally pay mileage on the foreign equipment.

Then the troop train has to necessarily be given preference over other train movements, causing additional overtime delay on line of road, and more coal consumption.

And we have had on the Birmingham Division to lease engines from other lines, and we have got ten Chicago & Northwestern engines leased from them. The A. G. S. Railroad has seven Erie engines that they just recently bought, and they have one from the T. A. G. Railroad leased at Chattanooga, in order to handle this excess business. You can't get locomotives from the builders at the present time, and we have to get second hand engines from other lines.

Q. Does the handling of troop trains through the terminal interfere with your normal terminal operations?

A. It does. Of course that is just another train movement. All of our terminals are congested to a large extent, due to the heavy increase in business. The facilities were not planned and built for such heavy abnormal business, and naturally it is causing delays to the other movements.

We have to ice and water all of them, which takes a lot of time.

Q. Does the question of overtime enter into it?

[fol. 1577] A. It does, of course, to a large extent. We have to pay overtime on our—we make quite a bit of overtime in our yard. Lots of times you have to hold engines on to take care of troop movements coming in. Ordinarily there is no scheduled train, particularly in your passenger yards, there is no schedule due in, and the troop movements are coming through, and that is the time you have to have additional switch engines to take care of them.

Q. Are all of the costs incident to the troop train movements chargeable to passenger operations, or does some of it go into your freight account?

A. Some of it goes into our freight.

Q. Will you give an example of what you have in mind in that connection?

A. Well, we use freight engines on quite a number of them that we have to, necessarily, on account of the heavy trains. They handle more cars and have more cars than our passenger engines will handle, and we use freight engines on them. The repairing of those locomotives is of course charged to freight expenses.

Q. Your train crews, though, that are assigned, or your engine crews, that goes into the freight account, doesn't it?

A. Yes, that goes, on a large number of them, I would say particularly the mixed trains where they have freight cars and passenger cars, as lots of them do, the crews [fol. 1578] would get freight pay. That is one of the provisions of their agreement.

Q. Now, aren't troop trains given expedited movement over your lines of road?

A. They are.

Q. Does that mean a delay to freight trains en route?

A. Necessarily.

Q. Does that result in overtime or do you know?

A. It does result in overtime.

Q. To the freight crew?

A. Yes.

Q. Is that overtime charged to passenger or freight expense?

A. To freight.

Q. From the standpoint of passenger train operations, is there any difference between the service which passengers traveling in interstate commerce receive from that which is given intrastate passengers in Alabama?

A. There is no difference whatever.

Q. Now, Mr. Simpson, I am going to ask you to deseribe as briefly as you can the passenger service which is offered by Southern Railway Company and the Alabama Great Southern to its patrons in the state of Alabama?

A. Well, on our line from Atlanta to Birmingham we operate trains 7 and 8, 39 and 40, and 11 and 12 regularly. I would say 85 percent of the time, numbers 39 and 40, [fol. 1579] and 7 and 8 are operated in two or more sections. That particular line has 105 miles of railroad in the state of Alabama.

Q. How many stops do those trains make within the state?

A. Well, they stop at all of the principal points. Here is——

Q. Take 7 and 8, for instance?

A. No. 7 stops at—its first stop in the state is Heflin, and then Anniston and Pell City and Birmingham. No. 8 stops at Pell City, Anniston and Heflin.

No. 39 stops at Heflin, Anniston, Lincoln, Pell City and Birmingham. No. 40 stops at Pell City, Anniston and Heflin.

Now, in addition to that, we have 11 and 12 that could make all of the stops.

Q. Now, what about your streamline trains, numbers 47 and 48?

A. 47 and 48 stop at Anniston on the Birmingham Division, and of course Birmingham and Tuscaloosa on the Alabama Great Southern.

Q. Will you tell us about the equipment on these trains, particularly as to the coaches, as to whether or not they are air conditioned?

A. Of course 47 and 48 have five coaches, all air conditioned. That is a solid air conditioned train, a dining car and a buffet coach. Numbers 7 and 8 carry three AC coaches and two NAC coaches.

Q. When you say "AC" coaches, you mean what?

[fol. 1580] A. Air conditioned.

Q. Air conditioned?

A. Yes.

Q. "NAC" is not air conditioned?

A. Non-air conditioned. No. 39 and 40 carry two AC coaches and two NAC coaches.

Numbers 11 and 12 carry one straight AC coach, and one standard NAC coach.

Q. All right, what is your next line?

A. The next line extends between Chattanooga and Memphis. It is 144 miles of line within the state of Alabama. They have trains numbers 45 and 46, which are known as the Tennessean, and of course that is an all air conditioned train.

They have numbers 35 and 36 that operate between Chattanooga and Memphis, and numbers 7 and 8 that operate between Sheffield and Chattanooga.

Our numbers 45 and 46 stop, 45 stops at Scottsboro, Huntsville, Decatur, Sheffield and Tuscumbia. No. 46 in the opposite direction stops at Tuscumbia, Sheffield, Decatur, Huntsville and Scottsboro and Stevenson,

Numbers 7 and 8 between Sheffield and Chattanooga make all of the stops in Alabama. Also numbers 35 and 36 make all of them.

Number 7 and 8 is a Diesel air conditioned train. It carries only one coach, however, and because of the travel, [fol. 1581] additional equipment is not required.

35 and 36 carry two standard air conditioned coaches and one NAC coach. You didn't want the Pullman equipment on these trains, did you?

Q. Well, I think you might state whether they have Pullman equipment or not.

A. Yes, 35 and 36 carry one Pullman car. 45 and 46 have four air-conditioned coach cars and one buffet coach, a dining car and three Pullman cars. That is a streamline train with individual reclining seats.

Another line of the Southern Railway is the A. G. S. operating between Chattanooga and Birmingham. 234 miles of that line are within the state of Alabama. They have trains 41 and 42 between Chattanooga and New Orleans, and numbers 17 and 18 between Chattanooga and Birmingham, and of course No. 47 and 48, which is the Southerner that operates over the Birmingham Division from Meridian to New Orleans also.

Q. Now, will you tell us about the equipment on trains 17 and 18 and 41 and 42, and the stops made by those trains in Alabama?

A. I didn't name 42 and 43 that also operate between Cincinnati and New Orleans.

Q. You mean 43 and 44, don't you?

A. 43 and 44, I mean.

Mr. Bruce: 43 and 44?

[fol. 1582] Mr. Oliver: Yes, 43 and 44.

The Witness: Now, numbers 43 and 44 make practically all of the stops in Alabama.

By Mr. Oliver:

Q. What is the equipment on those trains? You haven't given it, I don't think.

A. Their equipment consists of three AC coaches, one NAC coach, one Pullman car. That is a Pullman-buffet car.

41 and 42, I will take 41 first, their first stop in Alabama is Valley Head, then Fort Payne, Collinsville, Attalla, Springville, Birmingham, Bessemer, Tuscaloosa, Akron, Eutaw, Livingston and York.

No. 42 in the opposite direction makes those same stops.

Q. What is the coach equipment on those two trains?

A. 41 carried a combined passenger and baggage car, two air conditioned coaches, individual seats and reclining chairs, two standard coaches, and five Pullman cars.

Numbers 17 and 18, take 17, it stops at Fort Payne, next Attalla, and Birmingham. No. 18 makes the same stops. Number 17's equipment is one combined passenger and baggage car, two air conditioned coaches, individual reclining seats, two standard coaches and two Pullman cars.

Q. Does train number 18 carry the same equipment?

A. The same equipment, both 17 and 18.

We have another line from Birmingham to Columbus, Mississippi, 112 miles of which is in the state of Alabama. [fol. 1583] We operate on that line a Diesel train, which is of course air conditioned and carries one coach. They make all of the stops within the state.

Q. Now, how much of the mileage between Birmingham and Columbus is outside of the state of Alabama?

A. Just 12 miles of it. We have another line from Sheffield to Parrish, all of which is in Alabama, consisting

of 95 miles. That is a Diesel air conditioned train and carries one coach.

I might add on these Diesel trains that we have to add an additional coach on week ends, Friday, Saturday and Sunday, which is usually a non-air conditioned car.

We have another line from Rome to Attalla, 41 miles of which is in the state of Alabama, and we operate a mixed train in there, in each direction, known as 115 and 116. They carry one coach for passenger travel.

Q. That is not air conditioned, I take it?

A. That is not air conditioned, no. We have another line from Rome to Selma, 196 miles, with about 25 miles of that being in Georgia. The rest of it is in the state of Alabama. And we operate a mixed train in there known as 15 and 16, running each way a day. They carry a combined car for baggage and express and passengers, and a straight coach for passengers. That is non-air conditioned equipment. We have another line from Selma to Akron, [fol. 1584] a total of 65 miles, all within the state of Alabama. We operate a mixed train on that, in each direction, known as 17 and 18. They handle one coach, non-air conditioned.

Q. Did you cover your line from Selma to Demopolis?

A. We have a line from Selma to Demopolis. It is 51 miles, roughly, and we operate a mixed train in each direction over there, known as 115 and 116. They handle one coach.

Q. What about the line from Selma to Marion Junction?

A. We have a line from Selma to Akron, I reckon you mean. I covered that, didn't I?

Q. Yes.

A. That Selma to Marion Junction line is served by this one going to Demopolis and Akron.

Q. All right.

A. We have a line from York to McDowell, which is 22 miles in length, and that is served by a mixed train in each direction, numbers 11 and 12. They carry one coach.

Q. All of that mileage is in Alabama?

A. Yes. Now, another line in our Birmingham-Mobile line, which is 264 miles and is served by a Diesel air conditioned train. They carry one air conditioned coach regularly, and two on week-ends, Friday, Saturday and Sunday. They make all of the stops.

Q. Now, Mr. Simpson, do these trains that you have described all handle both intrastate and interstate pas-
[fol. 1585] sengers indiscriminately?

A. They do.

Q. Mr. Simpson, you have been an operating officer for a long number of years. Can you tell us whether the operating conditions in Alabama are similar to those in Georgia and Mississippi and other states in which your lines operate, the Southern Railway Company?

A. I don't know of any differences that I could point out in operations at all. I imagine that the same operating conditions exist over there that exist here.

Q. Now, you have operated in Mississippi. Is there any difference in operating conditions in Alabama, as compared with those in Mississippi?

A. No, I don't think so.

Q. Are you familiar generally with the operation of the other railroads in the state of Alabama, and I mean by "other railroads other than your own lines, and can you say whether or not the operations or operating difficulties that you encounter under present conditions are the same as those encountered by the other railroads in Alabama?

A. Well, I sometimes make trips over other lines. I came down here on the L. & N. this time and frequently have occasion to ride the other railroads, and they seem to have about the same conditions that we have, of heavy traffic movements, and the same conditions similar to the travel, more or less.

[fol. 1586] Mr. Oliver: That is all from this witness.

Examiner Stiles: Mr. Oliver, I am interested in this matter of passenger troop train operations being charged to freight expenses. Will your other witnesses have any statistics on that?

Mr. Oliver: I am afraid not, Mr. Examiner. It is a matter that is hard to—you know the expense is there, but it is difficult to figure it out in dollars and cents.

Examiner Stiles: Then I will ask this witness do you have any information as to the volume of expense in connection with the troop train operations which is charged to freight expenses?

The Witness: No, we don't keep any division of that.

Examiner Stiles: Is it considerable, or are you in position to say?

The Witness: I would say it is—due to the fact we have a lot of mixed trains, it is a right smart.

Examiner Stiles: You may examine the witness.

Cross examination.

By Mr. Bruce:

Q. Mr. Simpson, when you testified before the Alabama Commission in a hearing, I think in December, or was it November?

Mr. Oliver: November.

By Mr. Bruce:

Q. Did you place in the record the number of military trains that your line had handled?

[fol. 1587] A. I believe I did.

Q. Did it run into the hundreds per month?

A. As I recall——

Q. Several hundred?

A. I don't recall the figures now.

Examiner Stiles: Will you read that question to me?

Mr. Oliver: If I may interrupt——

Examiner Stiles: Just a moment.

(The record was read.)

Mr. Oliver: I believe that testimony was put into the record by Mr. Barry who testified as a passenger traffic witness, and not by Mr. Simpson.

Mr. Bruce: Well, the Southern.

Mr. Oliver: We did put it in, and we also put in the number through Mr. Aiken in this hearing for the months of April and May, 1943.

The Witness: I don't recall definitely. The record will show whether I put it in or not, but I don't recall. Ordinarily we would not have that except on our immediate division, and no doubt Mr. Barry did put it in.

By Mr. Bruce:

Q. These terminal delays that you are talking about, how do they occur, at your terminals, we will say at Montgomery?

A. Well, I couldn't speak for Montgomery.

Q. Well, we will take your own territory then, Birmingham.

[fol. 1588] A. Well it interferes with, or naturally stops freight work on other trains to handle troop trains, and it results in delay to those trains.

If you have tracks occupied by troop trains and other trains might have to be held out of the yard until those troop trains leave, then that is necessary to be done so he can get an open track to come into.

Examiner Stiles: It is difficult for me to hear you.

The Witness: I say we frequently have——

Examiner Stiles: You need not repeat that.

The Witness: All right, sir.

Mr. Oliver: Have you completed your answer? I didn't know whether he completed his answer or not.

The Witness: I had completed it.

By Mr. Bruce:

Q. Are troop trains longer than ordinary passenger trains?

A. They are.

Q. Are they brought in passenger stations as a rule for the accommodation of soldiers?

A. They have to be for icing and watering, we don't have facilities in freight yards to ice and water passenger equipment.

Q. That would be true also of inspection of the trains, wouldn't it, that would be done at the passenger station?

A. That is right.

[fol. 1589] Q. And oiling and general care of the train would be done at the passenger station there?

A. That is right.

Q. How long are these troops trains ordinarily, how many cars?

A. Well, they will run anywhere from 10 to 25 cars.

Q. Would a 25 car train block your leads into your stations from your main lines at your ordinary terminal?

A. It would at the ordinary passenger terminal.

Q. Would it block your leads at Birmingham?

A. Our largest track in the Birmingham terminal will hold 21 cars and two engines.

Q. Therefore a 25-car train would block all leads?

A. It would not block all leads.

Q. Well, the most of them.

A. The adjoining track leads.

Q. That would render these adjoining tracks unusable until that train had gone out of that station?

A. That is right.

Q. Would that also influence terminal delays there in regard to your freight movement?

A. Not necessarily. But it would in some cases, for instance, movements out of what we call the 27th Street Yard at Birmingham, it would cause delays in connection with the movements out of there. We have three yards in Birmingham, and it would not affect the other two, of course.

[fol. 1590] Q. Now, do troop trains ordinarily have also property cars with them, freight cars, such as gondolas and flat cars, and what not on which is loaded equipment?

A. They frequently do.

Q. Do these cars move in the same train that the passengers move in?

A. They move in the same train. At Birmingham we take the whole train to the freight yard when they are mixed, and cut the passenger cars off with a switch engine and take them to the passenger terminal.

Q. You would have to switch from the yards to the passenger station to handle the passenger cars, would you not?

A. That is right.

Q. How do you assemble your equipment for these troop trains?

A. We assemble it from all over the railroad, wherever we can get it, at one point, and have it at the most convenient point, depending on the movement for which it is intended. We have it conditioned, iced and watered and supplied with drinking cups, toilet paper and cleaned.

Q. And then is that, after the assembly of this equipment, is it then moved on a train to the point where it will load the troops?

A. Yes, it is.

Q. In assembly and in moving a train to the point where troops are to be loaded, that is an empty car movement, is it not?

[fol. 1591] A. That is right.

Q. Then after you have delivered the troops to their destination, you have the same operation, you have to take the trains back, and then distribute the equipment again?

A. It depends on where your next movement is from. You might need it somewhere else.

Q. I am speaking about under ordinary conditions.

A. If we had no other movement booked, it would probably go back to where it came from.

Q. Therefore, you would have two empty car movements, with one loaded movement under ordinary conditions, would you not?

A. I wouldn't say "ordinary conditions", because that equipment is used continuously, and before we get through with one movement, we usually know where the next movement is going to be.

Q. But you would have the next movement to wherever the next movement would be?

A. Yes.

Q. And that would be empty?

A. That would be empty, yes.

Q. Are camps on the Southern located on your main line? We will take Camp McClellan?

A. That is on the main line, Fort McClellan is on the main line of both the Mobile Division and the Atlanta Division.

Q. How far is that located from your main line, the spur, [fol. 1592] what is the length of the spur?

A. It is about eight miles from the Birmingham Division to Fort McClellan. You get there by using the Mobile Division main line.

Q. Do you use a switch engine to serve McClellan from the main line over your spur into Fort McClellan?

A. Yes.

Q. You use that switch engine twice, do you not, that is two trips, first you spot the cars at Fort McClellan, and after they are loaded you have to go in there and get them?

A. That is right.

Q. Therefore you would have two trips of eight miles, which would be 16 miles, in other words, 32 miles that you would consume in loading troops there and bringing them to the main line and placing equipment, is that right?

A. That would be 32 engine miles, yes, sir.

Q. I mean engine miles?

A. Yes, sir.

Q. You are not familiar, you state with the conditions here in Montgomery?

A. No, I am not very familiar with those.

Q. You don't know how you would serve Gunter Field or Maxwell Field, do you?

A. No, I don't know that.

Q. Would you have an opinion about how these two [fol. 1593] fields are served in regards to troop movements?

A. No, I wouldn't have any opinion about it.

Q. You wouldn't know anything about the troop movement over the L&N, or the Illinois Central?

A. No.

Q. Or the Frisco?

A. No.

Q. The Atlantic Coast Line?

A. No.

Q. Would you care to state an opinion about whether their troop movement is light, as an operating man?

A. Well, I wouldn't state other than this, the Illinois Central operates over our line between Haleyville and Jasper, and they handle on an average of about three troop trains a day. That is as far as I can go with it.

Q. From what you state there, terminal delays and method of handling troops from the camp to the main lines of the other railroads would be about the same as yours?

A. I wouldn't know.

Q. You stated that you knew about operating conditions over certain lines that you traveled over in Alabama, but you wouldn't know about the troop movement?

A. I wouldn't have any information—I don't mean by that I would have intimate knowledge of it.

Q. What other camps do you have on the Southern in Alabama?

[fol. 1594] A. We have Camp Sibert up at Attalla.

Q. How far is that from your main line?

A. That is right on the main line.

Q. Just an ordinary switch?

A. Yes.

Q. What others do you have on your lines in Alabama, Mr. Simpson?

A. I don't believe we have any other camps on the Southern Railway in Alabama. There is one at Mobile, but that is not on the—I believe the L&N serves that if I am not mistaken.

Q. You transport troops from Mobile, do you not, over the Southern?

A. No, we haven't—I don't know of any troop movements moving from Mobile.

Q. Do you have any troop movements of Craig Field at Selma?

A. No, I don't know of any special train movement other than on regular trains.

Q. Of course you know about the increased expenses of the Southern, you stated that you had increased expenses?

A. I do. I haven't the figures with me, but——

Q. You know there are increased expenses?

A. Sure.

Q. I want to ask you this question, if you didn't have any military movement whatsoever at the present time, would you have sufficient engine equipment and passenger train [fol. 1595] equipment to handle civilian travel?

A. Not—we have it with what we have got now, but we wouldn't have it had we not acquired this other power that I speak of.

Q. With the acquirement of your additional new equipment that you have acquired, would you have sufficient equipment?

A. Yes.

Q. I want to ask you this, did you operate one extra train in Alabama since January 1, 1942, to handle exclusively civilian passengers?

A. I don't think you would find a train operating anywhere in the United States now that had exclusively civilian passengers on it, you would find soldiers on it.

Q. In other words, you haven't had any since January 1, 1942?

A. All trains have military personnel on them at the present time. I have never seen one that didn't have.

Q. Now, have you made any observation in regard to that, military travel and the civilian passenger travel on your trains, Mr. Simpson?

A. No, I have not prepared any figures on that.

Q. What would be your opinion, how would it be divided in percentage, on your regular passenger trains?

A. Well, sometimes you find a good many more civilians than you find soldiers, and other times you find more soldiers than you do civilians.

Q. These extra sections that you stated that you operated [fol. 1596] on your regular trains, that is on the same numbers that you operate your regular trains. What are these, through trains altogether?

A. No, they are extra sections of regular trains, due to the overflow travel, both civilian and troops combined.

Q. Might there be cars on some of these trains that would be loaded with soldiers entirely, a car movement?

A. It could be, but not necessarily.

Q. Now, you stated that if you had four extra cars, that is over your regular complement that you ordinarily handled on one of your passenger trains, that that would necessitate an extra section, is that right?

A. If we had one additional car above the capacity of the locomotive, why we would have to run another section. We of course would not run it with one car, but we would divide the train up in equal portions for operating convenience.

Q. Wouldn't you doublehead that train instead?

A. We would doublehead to a certain limit.

Q. What is that limit?

A. Well, according to the grades and according to the size of your engine, but I mentioned the Birmingham Division there, that 16 was our limit in our train.

Q. Then your regular trains have not been increased in any way, that is, the number has not been increased in any way whatsoever since January 1, 1942, to the present date, [fol. 1597] have they, the regular scheduled trains?

A. Yes, they have put on additional trains on the Alabama Great Southern for the handling of mail and express, to relieve the regular trains, passenger trains of this work, so that they could handle more passengers and passenger cars.

Q. These would be second sections of your regular train, would they not?

A. No, they are regular scheduled trains.

Q. Regular scheduled trains?

A. 3 and 4, and 5 and 6 operate between Chattanooga and New Orleans. Their primary purpose of putting them on

was to handle mail, express and baggage to relieve the regular trains so they could handle more passenger carrying cars.

Examiner Stiles: Do they handle any passengers?

The Witness: Only in case of missed connection. If the regular train, preceding train, should miss a connection, they would pick it up, but that is about the only condition under which they handle passengers.

By Mr. Bruce:

Q. Now, you stated that you had split your dispatcher divisions, is that right?

A. That is right.

Q. Is that necessitated from the fact you had heavy troop movements, that is extra trains?

A. Not entirely. It is coupled with the other heavy movements.

[fol. 1598] Q. I want to ask you the same question again about if you didn't have any military movement at all, if you had only these trains operated today to handle passengers and mail and express exclusively, would you have had to split your dispatcher business?

A. Well, we hadn't split it until the war started, of course. If we hadn't had any war, it would still have been done that way, but there is a whole lot of civilian travel that has been brought about by the war effort, as well as the troop movement.

Q. Now, as to general office employees, I mean on your division, would that be true, would the same be true, would the ordinary force, could you handle your ordinary business, I mean not taking into consideration troop movements?

A. Well, I wouldn't say that they could, because we went into this thing with a depression organization. They couldn't handle even the civilian travel that we are handling now without additional help.

Q. Then that was occasioned by the fact that you were on a skeleton crew, then, you didn't have very much business at the start of the war?

A. I think it is generally known that we had a depression from 1930 to 1935.

Q. Are you familiar with the troop movement out of Camp Rucker?

[fol. 1599] A. No, I am not.

Q. And the same would apply to any other camp that I have not named that is located in Alabama?

A. No, I would not be familiar with any off of my line.

Q. What is the first point in Alabama that a passenger could stop off at and buy a ticket enroute from Cincinnati to New Orleans southbound?

A. Well, at Attalla I would say would be the first point that he would have time to go in the station and buy a ticket.

Q. He couldn't stop at Valley Head, could he?

A. He would not have time to stop there.

Q. Does the average small station at the border points have a ticket agent at night?

A. Attalla has.

Q. No, but I mean Valley Head and points like that.

A. Well, it depends on whether it is a day and night telegraph office. Valley Head would have, because it is a continuous office.

Q. Does it have a telegraph operator, and does he sell tickets?

A. That is right.

Q. What trains stop at Valley Head?

A. Numbers 43 and 44, and 41 and 42.

Q. How long do they stop there?

A. Long enough to do whatever station work they have to do, unload passengers and mail, baggage, and express.

[fol. 1600] Q. Would that man on duty on night shift have to help unload mail and secure it after it is unloaded, and express?

A. He would.

Q. Therefore there would be no one in the passenger station, I mean in the ticket office.

A. If you will recall I told you that he would not have time to buy a ticket at Valley Head, if that is what you are leading up to, I told you that in the beginning.

Q. I am just elaborating on it.

A. Yes.

Q. Now, coming in from New Orleans to Mobile, the same train, what would be the first point you would hit in Alabama?

A. Tuscaloosa.

Q. Tuscaloosa, that would be the first point that a man would buy a ticket at, wouldn't it?

A. Yes.

Q. And would the same apply from Meridian?

A. Coming north?

Q. Coming north.

A. I would think Tuscaloosa would be the first point he would have an opportunity to get off and buy a ticket.

Q. How far is Tuscaloosa from the Alabama-Mississippi line, approximately, Mr. Simpson?

A. That is 616, and Tuscaloosa is 536; that would be about 76 miles.

Q. Now, what would be the first point that a man could [fol. 1601] buy a ticket traveling east from Memphis in Alabama?

A. I would say it would be Sheffield.

Q. Is Sheffield a telegraph station?

A. Yes, sir.

Q. And would the same explanation apply at Sheffield as applied at Valley Head, there would be one man on duty there?

A. No, Sheffield has a continuous ticket service.

Q. Do you know how long your trains stop there, do they stop just long enough to do their work?

A. They do their station work and change engines and have an inspection.

Q. You operate a train from Demopolis into Marion Junction, do you not, a mixed train?

A. Demopolis into Selma.

Q. Into Selma?

A. Yes.

Q. And that train continues from Selma on to what point?

A. It doesn't—it terminates there.

Q. I mean the cars on that train that have passengers on them?

A. They don't continue beyond Selma.

Q. How do they get out of Selma?

A. They go back to Demopolis the next day. They make a round trip a day between Selma and Demopolis.

Q. What if they were destined beyond Selma, what if they were going in interstate commerce?

[fol. 1602] A. There wouldn't be any cars in that train that—any passenger cars that would be going in interstate commerce.

Q. Therefore they would have to change trains there?

A. They would have to change trains there, yes.

Q. On your streamliners, I don't know whether you know that or not, and if you don't, I will withdraw my question, but are these people on the streamliners, in the coaches, all assigned on reservations, Mr. Simpson?

A. They are.

Q. Therefore a man cannot travel on these streamliners unless he has a seat space, is that right?

A. Well, that is oftentimes assigned at the train by the passenger representative who is on the train.

Q. Might he permit someone to stand if there are not sufficient seats?

A. No, he doesn't take on any beyond the seating capacity. Of course he does fill the seats in the observation car.

Q. That would require a first class ticket, of course?

A. Yes.

Q. That would not be a coach ticket?

A. Oh, yes, it is a coach ticket, it would not require a first class ticket.

Q. You mean to buy a seat in the reservation, in the observation car?

A. That is right, that is an all coach train.

Mr. Bruce: Is that correct? Can you ride in the observa-[fol. 1603] tion car attached to that train?

Mr. Aiken: The observation car is put on for the benefit of all seat passengers. Anybody and everybody can occupy it. Sometimes the passenger agent on the train, when he has an extra load get on, will permit them to ride in the observation car, and sometimes even in the dining car in order to accommodate the passengers.

Mr. Bruce: That is only in case though where there are no seats available?

Mr. Aiken: That is correct, that is correct.

By Mr. Bruce:

Q. Mr. Simpson, I am going to ask you this: if a passenger bought a ticket from Cincinnati to Birmingham on a streamliner, on the Cincinnati train——

A. We have no streamliner that operates on that route.

Q. You have a limited train, though?

A. Well, I wouldn't say it is a limited train. We have 43 and 44 that operates from Cincinnati to New Orleans.

Q. Where does the streamliner operate?

A. The streamliner operates between Washington and Memphis, and between New York and New Orleans. The Memphis route, of course goes through Chattanooga and the New Orleans route comes down through Atlanta to Birmingham.

Examiner Stiles: I can't hear you.

The Witness: I say the Memphis route operates through Chattanooga and the New Orleans route operates through [fol. 1604] Atlanta and Birmingham.

By Mr. Bruce:

Q. We will take Washington as an example. If a man bought a ticket in the coaches on a streamliner at Washington to Birmingham, and then attempted to buy another ticket from Birmingham to some other point in Alabama, Mobile we will say, en route to New Orleans, do you think he would have any chance of getting a reservation out of Birmingham that is a seat reservation?

A. Well, now if he was going to New Orleans, of course he wouldn't——

Q. Break his trip so that he could defeat interstate commerce?

A. Oh, yes, he would have an opportunity if he wanted to break his trip to Birmingham on the streamliner, he would have an opportunity of getting a reservation from Birmingham to New Orleans.

Q. You mean on the same train?

A. Well, he would not have any occasion—I thought he was going to break his trip.

Q. He is breaking his trip up this way, by buying, as explained by numerous witnesses yesterday, he could buy a ticket, and then hop off the train, and then buy another ticket between two points in Alabama, another ticket from another point in Alabama to his final destination in interstate commerce, to avoid the interstate fares?

A. He couldn't defeat the interstate fare there, because [fol. 1605] it would still be an interstate movement from Birmingham to New Orleans.

Q. No, I mean he would buy a ticket from Washington, D. C., to Birmingham, then he would attempt to get another ticket on the same train from Birmingham to Mobile.

Mr. Oliver: The train doesn't go through Mobile.

Mr. Bruce: Well, wherever it goes to, say the border, the first point, that would be Tuscaloosa, would it?

The Witness: Yes.

By Mr. Bruce:

Q. Buy another ticket to Tuscaloosa; do you think he would stand any chance of getting a seat which he would have to ride on that train between Birmingham and Tuscaloosa, on the same train that he came in on?

A. Well, I can answer that by an example. I think it was last Thursday, I met the train in Birmingham and got seats for four friends of mine that just showed up at train time, and there were ample seats on there for them.

Q. Oh, you as the superintendent naturally would get reservations above an ordinary traveler, wouldn't you.

A. No, no, the space was on the diagram.

Q. Give me your opinion as to whether or not the man could get a seat on the same train coming from Washington, D. C., through Birmingham on and from Birmingham to Tuscaloosa?

A. I think he could.

Q. Under ordinary conditions?

[fol. 1606] A. To Tuscaloosa I think so, because there would be of course a lot of passengers who would get off at Birmingham and then he could use Meridian space for Tuscaloosa passengers, and Tuscaloosa passengers, passengers that would get off at—passengers that might get on at Tuscaloosa, he could use that space.

Q. So it is your opinion that he could between Birmingham and Tuscaloosa. Now, between Tuscaloosa and New Orleans, arriving on the same train at Tuscaloosa, and he would attempt to buy a ticket, or try to buy a ticket and get his same seat, or another seat from Tuscaloosa to New Orleans, do you think that is possible?

A. It is possible, of course.

Q. Would it be probable?

A. I would say it would not be every day that he could do that, but——

Q. Thank you. Now, do you always have the same arrangement of cars, that is in regard to coaches, on the various trains that you have made a statement on?

A. That is the minimum that we have.

Q. Any added cars on there, what class of equipment would it be?

A. They would probably not be air conditioned cars.

Q. Probably with steel underframe; they might be steel cars, but they would not be air conditioned, you would not [fol. 1607] have any revolving seats, would you, in them?

A. Well, no, they would not be streamlined cars. The only revolving seats we have are on the streamliners.

Q. Do you have any knowledge of your revenue at the present time, excepting that you know you have added revenue?

A. No, I haven't any figures with me on the revenue.

Q. Now, this terminal delay of freight trains occasioned by the heavy movement of passengers, I think you said it was primarily occasioned by troop movements. Of course past eight hours that would be overtime, would it not?

A. That is right.

Q. Under certain conditions a man might not complete his run under the 16-hour statutory limitations?

A. That is possible, yes, sir.

Q. Would that man then receive deadhead pay to his terminal, to his home terminal?

A. He would if we sent another crew over to get the train.

Q. You would have to?

A. Which we most frequently do.

Q. You would have to if the train was on the border line of the 16-hour statutory limitation?

A. No, we have the privilege of camping them on the line of road and letting them take their rest.

Q. If he took his rest, would he be on time, that is on pay time while he was taking his rest away from the terminal?

[fol. 1608] A. Not until he would start up again immediately after his rest was up, which is eight hours.

Q. What do you charge that to?

A. That is all charged to freight.

Q. Now, on the freight cars that are on passenger trains in troop movements, the revenue from that is assigned to what?

A. The freight revenue goes to the freight accounts, and the passenger revenue goes to the passenger accounts.

Q. It is divided up?

A. Yes.

Q. Do you have any empty car movement at all, Mr. Simpson in the handling of civilian passengers today on your regular trains?

A. We have some. Civilian travel of course will more nearly balance than troop travel, but there are empty car movements in the handling of civilian travel, too.

Q. Give me an example, please.

A. Well, week-ends, for instance, usually the heavy travel begins on Friday. We would have to get a car down to an outlying point to come in on that train on Friday, and then we would have to run that car back on that train, say, Sunday. Well, Monday there wouldn't be any need for it, so far as the travel going is concerned, but we would bring it in, because we would get the use of that car through the week for any other movements, that might materialize, instead of leaving it at some point [fol. 1609] until the need came up next Friday.

Q. You would handle that car on a regular passenger train?

A. Yes.

Q. A scheduled passenger train?

A. That's right.

Q. Therefore you would not have any train movement on that car at all, you would have just an added car?

A. Just an added car, yes.

Q. In the movement of troops though, in train lots, you don't have that condition, you cannot handle these on your regular trains, that is a trainload, you cannot handle that on the regular scheduled train, can you?

A. There is a limited amount that I can handle on a regular scheduled train.

Mr. Bruce: That is all I have, Mr. Simpson. Thank you.

Examiner Stiles: Are there any other questions on redirect?

Mr. Oliver: Nothing more, thank you.

Examiner Stiles: You are excused.

(Witness excused.)

Examiner Stiles: We will take a short recess at this time.

(Whereupon, a short recess was taken.)

Examiner Stiles: Call your next witness.

Mr. Oliver: I will call Mr. Tassin.

J. S. Tassin was sworn and testified as follows:

[fol. 1610] Direct examination.

By Mr. Oliver:

Q. Give your name to the reporter, please, and state your residence and official railroad connection.

A. J. S. Tassin, residence Arlington, Virginia, general statistician, Southern Railway System Lines, with headquarters at Washington.

Q. State how long you have held your present position, and generally the experience you have had in railroad accounting and statistical work?

A. I have held my present position since 1932, and I have had 40 years continuous experience in the accounting department of some one or more of the Southern Railway System Lines.

Prior to 1914 I was in the bookkeeping and disbursing departments. In 1914 I was detailed to valuation work. In 1917, in addition to valuation work I had to take on the auditing of construction accounts and disbursement accounts.

In 1918 I was put back exclusively on valuation work, and in 1920 I was made auditor of valuation, and in 1932 I was appointed to my present position.

Q. Mr. Tassin, you have prepared an exhibit for introduction in this proceeding, have you not?

A. Yes, sir.

Q. Consisting of 22 pages?

A. That is correct.

Mr. Oliver: I will ask, Mr. Examiner, that this be marked [fol. 1611] for identification at this time as Exhibit No. 17, I believe it is.

Examiner Stiles: Let the reporter so identify it.

(Exhibit No. 17, Witness Tassin, marked for identification.)

By Mr. Oliver:

Q. Will you take up your Exhibit 17, Mr. Tassin, page by page, and explain it?

A. The first three pages will be found to be self-explanatory, so I will pass at once to page 4 of the exhibit, which shows the loss in passenger revenue reflected by what would have accrued had the increase sought in intrastate fares been in effect in the state of Alabama during the three periods shown in the statement.

The first of these periods is the 12-months' period ended with February 28, 1943. In other words, I started with the month of March, 1942, which was the first full month after the Interstate Commerce Commission had granted the 10 per cent increase. The next column——

Mr. Bruce: Wait a minute. You say there would be a loss there through the action, I mean occasioned by the fact that the Alabama Commission did not grant the 10 per cent increase?

The Witness: I said it is the loss that is reflected by that computation, had it been possible to have the increase her- sought put into effect. I do not claim that it was possible to put them into effect on that date, but we are trying to establish comparable periods, as to what the effect [fol. 1612] would have been.

By Mr. Oliver:

Q. Mr. Tassin, the fares in Alabama, increased fares in Alabama, were published to become effective December 1, 1942, were they not?

A. That is correct.

Q. As I understand it, what you are attempting to do is to show what the revenue would have been, or what the loss would have amounted to on a yearly basis, and you have taken first the year ended February 28, 1943, and second the year ended March 1, 1943?

A. That is right.

Q. To arrive at an annual loss as a result of this failure to get the increase?

Mr. Bruce: I want to ask counsel if he proposes to have his witness show that the revenues in 1942,—I mean in 1943, will be comparable with 1942?

Mr. Oliver: I don't know that I understand your question.

Mr. Bruce: Well, do you anticipate any increases in 1943 over 1942?

Mr. Oliver: I think the statement will show that. If you will be a little patient, Mr. Bruce, I think you can on cross examination develop, if Mr. Tassin does not bring out exactly what is shown, or what you wish to find out.

Mr. Bruce: Well, we will let him proceed.

By Mr. Oliver:

Q. Suppose you go ahead with your explanation.

[fol. 1613] A. Yes, sir.

Q. I think Mr. Bruce will find that.

A. I will state for Mr. Bruce's information that the figures for the year 1943 are in the statement and automatically show the comparison 1943, and 1943—I mean 1942 is in the statement.

Mr. Bruce: Do you have it in months in 1943?

The Witness: We have no months in 1943.

Mr. Bruce: I have them.

Examiner Stiles: You have four months in 1943?

The Witness: Yes, in this first statement, of what the loss would have been.

By Mr. Oliver:

Q. All right, go ahead with your statement, Mr. Tassin.

A. The statement shows that had the arrangement here sought been in effect in the first twelve months period, there would have been $654,255 more in the cash drawer on these fourteen carriers. For a 12-month period——

Examiner Stiles: Do these fourteen carriers all operate in the state of Alabama?

The Witness: They do, and they are the fourteen carriers who have been made Respondent in this proceeding.

Dropping forward a month, and taking the 12-months comparison on the basis, the loss in revenue rises to $688,983.

For the four months period ended with March 31, 1943, a [fol. 1614] third of a year, the indicated loss is $250,166, and raising that to an annual basis by multiplying by three, it is $750,498.

By Mr. Oliver:

Q. Then, Mr. Tassin, your figures shown in the last column are really reflecting the revenues of which the carriers have been deprived up to March 31, 1943, do they not?

A. That is correct.

Examiner Stiles: This page also discloses the answer to Mr. Bruce's question, doesn't it, that it shows, too, an increase in the traffic in 1943?

The Witness: That is correct.

Examiner Stiles: A decided increase?

The Witness: That is correct.

Mr. Bruce: This is intrastate revenue—it might save considerable cross examination, if I might ask him a question.

Mr. Oliver: All right.

Mr. Bruce: With your permission.

Mr. Oliver: Yes, go ahead.

Mr. Bruce: The losses in intrastate revenue, what kind of a loss is that, is that a net loss, is that a net revenue loss?

The Witness: No, it is a gross revenue loss.

Mr. Bruce: It is a gross revenue loss; yes, go ahead.

By Mr. Oliver:

Q. Now, Mr. Tassin, so far as the Southern Railway Company and the Alabama Great Southern Railway Com-
[fol. 1615] pany are concerned, these figures were prepared by you, or under your supervision, were they not?

A. They were, under my supervision.

Q. Now, as to the other railroads shown on sheet 4, or page 4 of your exhibit, how was that information obtained?

A. They were furnished me by the accounting departments of the Southern roads, at the request of their passenger representatives.

Mr. Oliver: Now, I might state at this point, Mr. Examiner, that we have present accounting representatives of the Atlantic Coast Line, the Louisville and Nashville Railroad, the Seaboard Air Line, Illinois Central, the Central of Georgia Railway Company, and the Western Railway of Alabama, and the Gulf, Mobile & Ohio, whose losses in revenues account for the most substantial part of it, of the revenue losses shown. The Tennessee, Ala-

bama & Georgia, for instance, who is not represented, the loss is shown as only $395 for the four months. The St. Louis-San Francisco loss is only $503, the Nashville, Chattanooga & St. Louis loss is $78, and the AT&N is the only road that has any substantial income involved who hasn't a representative here.

Mr. Tassin of course is not prepared to stand cross examination on the details of the data for these roads other than the Southern Railway Company and the Alabama Great Southern, but these other railroads have witnesses here who can give any information desired as to [fol. 1616] the losses shown or forecasted losses for their respective railroads.

Examiner Stiles: As I understand, you intend to call those witnesses only if——

Mr. Oliver: If anybody desires to cross-examine them as to the details of their particular figures.

Mr. Bruce: Mr. Counsel, are these accounting witnesses?

Mr. Oliver: Yes, they are accounting witnesses of the various railroads.

By Mr. Oliver:

Q. Now Mr. Tassin, you might explain just how you arrived at the losses or forecasted loss for the Southern Railway Company and the Alabama Great Southern?

A. We make a monthly accrual of intrastate revenues in the several states in which we operate. It is a part of our regular accounting procedure.

Then when it came to preparing a loss accrual here for the Alabama Great Southern and the Southern, we went back over the details underlying our monthly accruals, beginning with 1942, and found that the month of April, 1942, was a fairly representative month.

We separated for that month the tickets that would be, and would not be affected by the proposed increases here, not only the tickets, but the conductors cash reports; and interline reports, all of the basic information.

We ruled out, for example, the people traveling on fur- [fol. 1617] lough, and got a representative figure for the revenue that would be increased were this petition granted. And then on the percentage relationship of the other months of the year to the month of April, we arrived at the estimate of loss here shown.

Examiner Stiles: You say you ruled out the people traveling on furlough. Isn't their fare based on these fares that you did consider?

The Witness: That class of fares is not subject to increase.

Mr. Oliver: That is the 1¼ cent fare.

The Witness: And therefore there would be no loss. That is the 1¼ per cent?

Mr. Oliver: I mean 1¼ cents a mile.

The Witness: 1¼ cents a mile. We segregated the class of travel that would be subject to the petition here.

Examiner Stiles: I am interested in this point, that although the Southern has more mileage in the state of Alabama than any other railroad, yet your statement shows the loss from the L&N to be more than three times as great as that of the Southern. Have you anything to say as to that, why that is?

The Witness: Well, that would indicate that the Alabama Great Southern has more intrastate business in Alabama than does the Southern.

Examiner Stiles: You mean the L&N?

[fol. 1618] The Witness: The L&N. Now, the L&N itself has 101 more miles in Alabama than the Southern, they are very close together, but when you add the Southern and the Alabama Great Southern together, the Southern Railway System Lines have more mileage in Alabama than the Louisville & Nashville and the NC&StL together, for example. That is what Mr. Simpson said, that we had more mileage in Alabama than the Alabama Great Southern. He was adding together our system lines, the Alabama Great Southern and the Southern.

Examiner Stiles: Of course adding this estimated loss of the Alabama Great Southern and that of the Southern, you still have less than one half of that estimated for the L&N. I was wondering if they used any other or different method from what you did in determining this estimated loss.

The Witness: Mr. Kennedy of the Louisville & Nashville is here, and he will be able to furnish information as to the conditions on that road in Alabama.

Examiner Stiles: You are not informed as to whether these other carriers used the same method you did in determining this estimated loss?

The Witness: All of the carriers were requested to furnish the most accurate information possible. Those who had actual figures were requested to use actual figures; those who had to have recourse to accruals were asked in the light of operations of their road to furnish [fol. 1619] the very closest approximation possible. No ironclad rule was used. We were aiming at an ultimate accurate result on the amount of loss involved.

Examiner Stiles: All right, proceed with your explanation.

The Witness: Before I pass from this stage, I want to indicate a simple computation that I wish to use later on in the illustration of the succeeding page.

Take the average annual loss for the year ended February 28, 1943, which is the closest period in time to the year 1942, in its entirety. Divide that $654,255 by 12. The average monthly loss is $54,521. If you multiply that by 10 and 9/14ths of a month, you will produce an amount of $580,259, the indicated loss, beginning on February 10, 1942, when the 10 per cent increase went into effect. I wanted that fraction of a year in there for use on page 5, to which I will now pass.

Now, this page 5 shows the net railway operating income or deficit produced by passenger service as reported annually by these several carriers to the Interstate Commerce Commission, under rules prescribed by the Interstate Commerce Commission.

Taking the total line, No. 20, line No. 20, the total for the twelve roads, because the two second class roads make no such report to the Interstate Commerce Commission, not being required to do so——

Examiner Stiles: These are figures for the entire system, are they?

[fol. 1620] The Witness: These are figures for the entire system as reported to the Interstate Commerce Commission under rules prescribed by the Commission and represent the aggregate of the twelve first class roads operating in the state of Alabama.

It will be observed that in 1936 there was a deficit of $30,000,000; in 1937, $27,000,000; in 1938, $32,000,000; in 1939, in round figures again, $32,000,000, and in 1940, in round figures, $33,000,000. In 1941, the deficit dropped to $19,000,000, but you still had a deficit.

Now, if we add together those first six deficit years, there is a cumulative deficit of some $174,000,000.

In the year 1942 when I add to the thirty-one and some odd millions of dollars shown, the $580,289, which I have accrued for the year 1942, I produce an income of $32,000,000.

Now, dividing that income of $32,000,000 into a cumulative deficit of $174,000,000 shows that we must have five and two fifth years of prosperity to even the account, so to speak, as far back as 1936.

By Mr. Oliver:

Q. That is based on earnings for 1942?

A. Assuming that for five years to come, or six years to come, the present volume and conditions are going to fairly hold. And we must remember this, that passenger deficits did not begin in 1936 when the Interstate Commerce Commission first required them to be reported, but my own knowledge for Southern Railway System Lines is that there was a deficit all the way back to 1921, and [fol. 1621] I think that condition pretty generally obtained in the Southern region.

Examiner Stiles: Hasn't that been considered in making the freight rates, hasn't it been considered in every freight rate case of any proportions?

The Witness: Of course that is taken into consideration.

Examiner Stiles: So that you would not hope to arrive at a passenger revenue now that would wipe out the deficit of those past years?

The Witness: No, I am merely showing the comparison. What we specifically are doing here of course is to seek to make the fares and charges in the several states the same as on interstate business, and get an equal level of passenger fares and rates all over the country.

But in addition — that, we are indirectly accomplishing two other purposes, as my exhibit will show later on. In the first place, we are bringing together the two ends of the passenger trains, bringing them closer together as revenue producers. The head end of a passenger train is composed of baggage, mail and express cars, and produces more revenue per mile than the passenger carrying cars. In fact, 23 per cent of the miles produce 27 per cent of the revenue. If this petition is granted, it will tend to

bring together the two ends of the passenger train as revenue producers.

Another thing that it will tend to do is that it will bring [fol. 1622] together closer freight and passenger services as bearing the general transportation burden.

Now is the opportune time to put our houses in order, in respect to these several things, and try to get approximately a more nearly representative condition as between the services.

Now, we cannot of course hope for any era of prosperity long enough to offset past passenger deficits. We expect passengers to fall back into the deficit class just as soon as the war is over. That was the experience following the last war, and I see no reason why it should not follow this war also.

I am going to ask that we pass now to page 10 of the exhibit. I want to call attention to a figure there before I come back to page 6. Here we show the revenue per passenger carrying mile in cents.

In 1936, in round figures, it was approximately 15 cents a mile, 1937 16 cents, 1938 15 cents, 1939 15 cents, and 1940 15 cents. So, for those first five years passenger carrying cars produced about 15 cents a car mile in revenue.

Examiner Stiles: Do those figures in percentages on line 1 indicate account numbers in the ICC reports?

The Witness: That is correct. Now, in 1941, there was a jump to 20 cents a mile, and in 1942 a jump to approximately 37 cents a mile, as a result of this added passenger traffic since the war opened.

[fol. 1623] Now, turn to the next page, page 11, which shows the revenue per mile produced by the head end cars, baggage, mail, express and milk, and so forth. There in 1936 it was 25 cents a mile, 1937, 24 cents a mile; 1938, 22; 1939, 22; 1940, 22; and in 1941, 24; 1942 it was 26, not anything like the figures in revenue produced by these cars comparable to that produced by the passenger carrying cars. But the head end cars do produce proportionately more revenue per mile than the rear end or passenger carrying cars.

Mr. Bruce: Is that made up of the average of one month applied to the entire year?

The Witness: Oh, no, these are actual figures, annually reported to the Interstate Commerce Commission.

Mr. Bruce: But I mean in computing your amounts, and arriving at the figures. You stated the average figures for 1942. Do you use one month, the month of April?

The Witness: No, no, that month of April was used only in connection with the revenue loss on page 4.

Beginning with page 5, all of the figures are 12-month figures, taken from annual reports rendered to the Interstate Commerce Commission and on file with the Interstate Commerce Commission.

Mr. Bruce: And are system figures?

The Witness: They are system figures.

Mr. Bruce: You haven't anything to show what the [fol. 1624] actual Alabama figures are?

The Witness: No, we have made no separation of these figures for the state of Alabama.

Mr. Bruce: I call that to your very close attention, Mr. Examiner.

The Witness: In that connection, I will explain that these trains operating in the state of Alabama are interstate as well as intrastate trains, the interstate and the intrastate service being rendered by the same train over the same route, and it is not practical to attempt a segregation as between the services as between intrastate and interstate.

Mr. Bruce: Therefore, you don't know what it is intrastate?

The Witness: Specifically, no.

Mr. Bruce: Thank you.

The Witness: We have other comparisons though which will show the general relation of the state to the system.

By Mr. Oliver:

Q. Proceed, Mr. Tassin.

A. Now, if we turn back to page 6, I will deal with the last figure to the right on line No. 20. If we attempted to make up the deficit out of passenger revenue alone, that is the system deficit out of system passenger revenue alone as reported in account 102 to the Interstate Commerce Commission, that revenue would have to be increased by 31 per cent.

Q. Pardon me, Mr. Tassin. You referred to line 20; I think you meant 19.

[fol. 1625] A. Line No. 19, yes. I meant line 19. If we attempted to spread that over accounts 102 and 108, the percentage increase required would drop to 30. That figure is also on line 19.

Mr. Bruce: Are these based on system averages also?

The Witness: These are the system figures.

Mr. Bruce: And you don't know what the actual is, what they actually are in Alabama?

The Witness: No. Now, if we took the total passenger train revenue, including switching, the percentage of increase would drop to 22, and if we took in all passenger revenue it would drop to 21. There is a spread of 10 percentage points between the high and the low figure.

Now, I have already shown that the head end cars produce relatively more revenue per mile than the rear end cars. It is a matter of common knowledge that they do not incur as great an expense as the rear end cars. There is not the same expense for cleaning and supplying, and of course they do not incur the same proportion of station expense. There is very little station expense that would be chargeable to mail, baggage and express. The greater portion of that is chargeable to passengers.

So, that is the general situation there that any improvement sought should preferably come out of the passenger fares and rates.

Mr. Bruce: Is that because of the fact you compete [fol. 1626] directly, through your express company, which you own the majority of stock in, with the——

Mr. Oliver: Mr. Examiner, I object first to cross examination at this stage——

Mr. Bruce: I withdraw it.

Mr. Oliver: I have been very patient with Mr. Bruce.

Mr. Bruce: I withdraw the question. I ask your pardon, Mr. Oliver.

Mr. Oliver: All right.

By Mr. Oliver:

Q. Proceed, Mr. Tassin.

A. Now, turning to page 12, which deals with the total railway tax accruals for each of these years 1936 through 1942, using the year 1936 as index number 100, that appears on line No. 19, we find that in 1937 taxes had increased by 5 per cent over what they were in 1936. In

1938 the increase was 13 per cent, in 1939 the increase was 18 per cent, in 1940 the increase was 29 per cent. In 1941 the increase was 102 per cent, and in 1942 the increase was 395 per cent.

Examiner Stiles: These again are system figures.

By Mr. Oliver:

Q. 1941 you said 102. It is 202, is it not?
A. No, you have to subtract 100. The ratio is 2.02.

Examiner Stiles: These again are system figures.
The Witness: These again are system figures.

By Mr. Oliver:

Q. Now, turning to page 13, line 19, we have the comparison on basis of what the Commission apportions or [fol. 1627] ascribes to passenger service, where the increases in 1941 and 1942, for example, are not near so great as they are for the system as a whole.

Now, these two pages show that freight is bearing the lion's share of the tax burden.

Mr. Bruce: This is a system figure.

The Witness: These are system figures. Incidentally, I neglected to say, when dealing with page 5, these deficits through the year 1941, that to the extent that we have overcome that deficit, we merely break even. There is no return provided here on investments in property used in passenger service, so when we look at that $32,000,000 income in 1942, out of that there should be taken whatever amount is a fair return on property used in passenger service.

Now, taxes are not the only elements of cost that have increased. Line 18 of page 14, using again the year 1936 as Index No. 100, shows that the average hourly rate of compensation paid employees in 1937 was 4 per cent higher than it was in 1936. In 1938 and 1939 it was 10 per cent higher. In 1940 it was 11 per cent higher. In 1941 it was 18 per cent higher, and in 1942 it was 28 per cent higher. That is a rate of compensation, not the total amount of money paid employees, but merely the rate of compensation, the general average rate of compensation had increased to that extent.

Page 15 shows similar increases in the prices paid for [fol. 1628] materials and supplies. Taking the very last column of figures, December, 1941, and comparing with the first column of figures, October, 1936, as index No. 100, forest products had increased by 48 per cent, iron and steel products by 22 per cent, miscellaneous products by 9 per cent, and the total excluding fuel, by 24 per cent. Fuel had increased by 25 per cent, and the total including fuel drops back to an increase of 24 per cent.

The figures are taken from figures underlying Dr. Parmalee's Exhibit A-36 introduced in Ex Parte 148 reopened.

In that exhibit, he does not show this detail, but I went to his office and got the underlying figures represented or reported to him by the railroads as he had grouped them, and computed these figures for the Southern Region only. Of course Dr. Parmelee in Ex Parte 148 reopened spoke for the country as a whole, but these figures pertain to the Southern Region railroads only.

Examiner Stiles: Are these the unit prices of the articles indicated on the market, in general, or only as purchased by the railroads?

The Witness: As purchased by railroads.

Examiner Stiles: In other words, the forest products would not be all forest products, but only such as the railroads use?

The Witness: Such as the railroads use. Dr. Parmelee [fol. 1629] obtains semi-annual reports from representative carriers, and they report the increases as obtained from their specific purchase of these groups of material.

Mr. Bruce: I object to this witness stating what Dr. Parmelee did. He is using Dr. Parmelee here as a reference for his exhibit. Mr. Examiner, he doesn't know what formula Dr. Parmelee used.

Examiner Stiles: He examined the records, as I understood him to say.

The Witness: I went to Dr. Parmelee's office and got the underlying records. I am responsible for these figures. The figures are reported by the railroads to Dr. Parmelee, among others by the Southern Railway Company.

Examiner Stiles: You compiled these data?

The Witness: Yes, sir.

Examiner Stiles: You know what they cover?

The Witness: Yes, sir.

Mr. Bruce: Then let him state they are his figures. He is using Dr. Parmelee as an authority, stating what Dr. Parmelee did.

Mr. Oliver: I think he made it perfectly plain.

The Witness: I merely wanted to show the relation between my exhibit and the exhibit that Dr. Parmelee put in in Ex Parte 148. We both used the same basic figures, and each of us is responsible for our own conclusion.

[fol. 1630] Examiner Stiles: All right, I think they are properly explained.

By Mr. Oliver:

Q. Proceed.

A. On page 16, now, looking again at line 19, I show a direct comparison of freight and passenger operating ratios for the twelve class I roads involved in this proceeding, and I show for example that viewed as a group, in 1936, the freight operating ratio was 67 as compared with 126 for passenger. In 1937 we had 69 for freight and 121 for passenger. In 1938 we had 68 for freight and 128 for passenger. In 1939 we had 66 for freight and 128 for passenger. In 1940 we had 67 for freight and 127 for passenger. In 1941 we had 62 for freight and 107 for passenger.

In 1942 we had 58 for freight and 68 for passenger, showing that as the passenger volume increases, and if we can get the adjustments that are being sought, we equalize to a better degree under existing conditions the share of the general transportation burden as between your freight and passenger services.

Passenger is still to an extent a burden upon freight. These operating ratios are customary operating ratios obtained by——

Examiner Stiles: Explain that statement, when you say "the passenger is still a burden upon the freight."

The Witness: To an extent.

[fol. 1631] Examiner Stiles: You mean when you include the return that you should have on the investment in the passenger end of the business?

The Witness: That is, of course, an element, but what I had specific reference to is that the freight operating ratio is still lower than the passenger operating ratio. If they were both producing the same ratio, same operating results, I mean, they would be on a parity, let us say.

Examiner Stiles: All right, proceed.

The Witness: As I said, these figures represent the result we obtain when we divide revenues into expenses only.

The next page, page 17, shows the results when we add to expenses taxes and rents. I don't think any further explanation is needed on that page.

Now, whenever anybody says 1942 to me, I say 1932 to them. I can see no reason for laying more emphasis on 1942 than 1932, and I myself have ventured the specific statistical prophesy that 1952 is going to make 1932 look like prosperity.

The railroads, judging by their past experiences, have far fewer fat than lean years. If you were going to take any impoverished animal and start feeding it, fattening him for the market, so to speak, you are going to let him put a little fat on his bare bones before you try to stop it. We want to produce something like an average condition, because after all the making of these fares and charges is [fol. 1632] long range work. It is not a matter that changes from year to year, it has to proceed on the basis of long range experience.

Now, I have taken here the entire experience from getting out of one war and getting into another, so as to show all of the ups and downs that are involved between the periods of inflation that are inseparable from wars and the periods of depression that human ingenuity cannot prevent between wars.

Here are 22 years of experience. The average year of 1922 shows investment in railway property used in transportation service, including cash and materials and supplies——

Examiner Stiles: That is the book investment of the carriers?

The Witness: The book investment of the carriers that is devoted to transportation service, as annually reported by them to the Interstate Commerce Commission in Schedule 211-N of the annual reports, and it is the only basis that we have for comparison over a long range period.

Then I show the net railway operating income, and these roads as a group over 22 years of experience have earned 3.24 per cent on their investment. There is certainly nothing there to encourage permanent investment in railroad securities.

On page 19 I offer the same relative comparison for the Southern Region roads as a whole, class 1 roads. There the average rate of return is 3.23, so that these roads operating in Alabama shows a comparable experience with the roads [fol. 1633] that are operating in the Southern Region as a whole.

Now, on page 20, because all of these roads are not of the same relative importance, I have tried to produce a weighted average figure on some consistent basis that would give a weighted average result with respect to these roads operating as a system or as systems, and also the portions of them that operate in the state of Alabama. I have used miles.

I am taking the entire line, I am now looking at line 20, the weighted result for these roads as a whole, the average rate of return over the 22 year period was 3.11 per cent; less than the 3.24 when you lump them together as a group, and less than the 3.23 when you lump all of the Southern Region roads together as a group, 3.11 for the entire line, and strange as it may seem, the same figure when the weighting is based on miles operated in the state of Alabama.

Now, that result may look a little strange when we look at the rate of return of the Southern, for example, 3.73 per cent, and the Louisville & Nashville, 3.77 per cent, the two dominant roads having a decidedly higher rate of return than the weighted average for the group. But if you will look at the AB&C with a deficit return, and the other roads down the line with less, they weight the average down to a more representative figure or level.

Now, here I am comparing Alabama with the entire line to show that the operations in Alabama with respect to these [fol. 1634] roads is not greatly different from the operations as systems. In other words, there is not anything that happens in Alabama that is so greatly different than from what happens in other states, through which these roads operate.

Now, on the next page, page 21, I show here the fact and extent of revenue need. I want to explain just what that is. That ratio is obtained by dividing gross railway operating income as a divisor; gross operating outgo, plus a 5¾ per cent return on investment as a dividend; and the resulting ratio indicates whether or no over this extended period there is need of additional revenue, and by what per cent

gross would have to be raised to provide these carriers with a net railway operating income equal to a 5¾ per cent return on their investment.

For the group here, and over that extended period, both from the point of view of inter-line operations, and operations in the State of Alabama, we find that there is a need of 13 per cent additional income as a result of long range computations.

Now, on page 22, I offer another and a final comparison. The latest appraisal put out by the Bureau of Valuation and entered as Exhibit A-11 in the original Ex Parte 148 proceeding shows computations of that bureau of how much capital would be required to reproduce these several properties as of January 1, 1940, to acquire their lands at the [fol. 1635] present value of them, and to provide them with working capital.

I have compared that figure with the amounts returned by these carriers in Schedule 211-N to the Interstate Commerce Commission and show that if they were to provide the public with these facilities as of January 1, 1940, they would have to increase their capital investment by 12 per cent.

That concludes my explanation of Exhibit No. 17. But on yesterday a question was raised as to what our statistics may or may not show with reference to the average number of passengers per car. I have before me Southern Railway Company's annual report for the year ended December 31, 1942, to the Public Service Commission of the State of Alabama, and we will turn to page 904 of that report, schedule 931, statistics of rail line operations.

I call attention to Item No. 76, on page 904, showing the passenger miles in the state of Alabama, 145,254,089. That is your dividend.

Next I call attention to items 42 and 43, which show the car miles that carry passengers, and to that I have added one half of Item 47, which carries the car miles of combination cars, part of it being baggage or mail, and the balance passengers carrying.

And when I accumulate those mileage figures and divide into passenger miles, I find for the state of Alabama in the year 1942 we averaged 28 passengers per car.

[fol. 1636] Now, just what does that statistic mean? It means one of two things, first, that you had a substantial movement of empty car miles; and, second, that the so-

called overloading of passenger car miles, while undoubtedly it does exist from time to time, is more or less equalized over the week, let us say. You may experience passengers standing in the aisles over the week-end, but if you ride on Wednesday or Thursday, you won't see nearly so many standing, if you see any standing, and these statistics equalize over the whole week.

There is a tendency on the part of all of us to overweight the unusual and the infrequent, and I don't think the overcrowding of passenger equipment is nearly as dark as the picture has been painted.

Now, compare this result in Alabama with the result of the system as a whole, which is reported to Alabama and similar figures have been used there, taken from page 508, on which appears Schedule 531, where in Alabama we have had 28 persons per car, for the system as a whole we averaged 25, so to the extent of three persons per car, Alabama is a little bit worse off than the system as a whole.

That is all I have on direct.

Mr. Oliver: You may cross examine.

Cross-examination.

By Mr. Bruce:

Q. Mr. Tassin, all of the investment figures that you have in your exhibit come from book values, do they not?

[fol. 1637] A. Yes, with an explanation. They are the book figures from which have been segregated any investment in property not used for transportation purposes. They are figures reported to the Commission under rules prescribed by the Commission.

Q. How do these figures, these so-called book values compare with the Commission's valuation of the Southern Railroad, do you know?

A. Yes, generally speaking, they are lower.

Q. How much lower?

A. I have shown you 12 per cent lower than on the basis of cost of their reproduction new for these roads as a whole.

Q. I am not talking about cost of reproduction.

A. What are you talking about?

Q. Would the cost of reproduction in 1940 be the same as the cost of reproduction in 1932?

A. No.

Q. Of your property investment?

A. What?

Q. Of your system investment?

A. The cost of reproduction changes from year to year.

Q. Therefore they are not reliable are they, because they are much greater at this time than they would be at any other time?

A. I wouldn't say a figure if not reliable, because it is [fol. 1638] greater.

Q. In other words, you are using the average, and you don't know what your book values are, excepting the values you have on your books?

A. You are wrong, I do know.

Q. Well, tell me.

A. I am going to tell you. In the case of our roads at the time that the Interstate Commerce Commission first started the valuation proceeding, and I was connected with it all the way back to 1914, they started out to examine the contents of our investment accounts, the theory being, and it was a true theory, that there were certain elements in those investment accounts, which however proper they may have been at the time the entries were made were not in accordance with the Commission's present rules for stating investment.

And as we wanted a common reference there, we agreed that it was perfectly proper to exclude any items that were in our investment account that were not now permissible to be contained therein. As a contrary to this adjustment, out of the investment accounts as then stated on the books, I developed a large volume of earnings that had been ploughed back into the property and had been charged to operating expense, or directly against income or profit and loss, which under the Commission's present rules should be charged to investment in road and equipment, and I [fol. 1639] showed that there was more money to be adjusted into than out of the investment account.

Q. What did the Commission do?

Examiner Stiles: You are speaking there of the Southern Railway.

The Witness: I am speaking of the Southern Railway System lines. Now, the Commission developed its own costs of reproduction new.

Now, just a minute, just let me finish. Now, I consistently used our investment as a conservative sum of money less than the amount of investment proven required to produce the property, and a lot less than the amount that would have to be raised if the property were to be purchased as of the present time, or produced as of the present time.

By Mr. Bruce:

Q. But if the property was produced maybe five years from now, and the conditions were the same as they were in 1934, then your figures would be assailable, and they would not cover the situation properly?

A. No, they would not be assailable. If you want to make a fair comparison as between roads, the only fair basis is current costs of reproduction. Otherwise, you penalize a road that was built in a period of high costs and benefit a road that was fortunate enough to have been built in a period of low costs. The full comparison of like with like, as between the several railroads, is on the basis of current cost of reproduction new.

[fol. 1640] Q. All right, then you disagree with the Commission?

A. Humbly, yes.

Q. Yes. The Commission has its valuation. Do you use that valuation in arriving at rate making, before the Commission?

A. We do not.

Q. Does the Commission use it?

A. Well, now—you would have to ask the Commission about that.

Q. I am asking you.

A. I don't know.

Q. You are an expert witness, you are the statistician of the Southern Railway, and you have talked about property investments. Now, I want to know whether the Commission uses, in rate making, its book valuation, or uses your book figures?

A. I bent every effort to testify against them doing it, to prevent them from doing it.

Q. But they did it just the same?

A. I don't know.

Mr. Miller: May I point out in Ex Parte 148, the report on further hearing, they did not use any basis of valuation, did they?

The Witness: I think so.

Mr. Bruce: At this time I wish to make reference, Mr. Examiner, to I&S Docket 4495, in which the Examiner, the [fol. 1641] Chairman of the Commission at that time, Commissioner Aitchison, in which all of the exhibits of the carriers were ordered revamped, and the Commission's valuation shown.

Mr. Oliver: For what?

By Mr. Bruce:

Q. Now, turn to page 4 of your exhibit.

A. All right.

Q. You stated, I believe, that all of your sheets in this exhibit are based on system averages, did you not?

A. With the exception of this page 4.

Q. This page 4?

A. And I also stated that that showed some comparison with state results in the back here, mileage and so forth.

Q. I am asking you to tell me.

A. Yes.

Q. Did you take into consideration the military movement in troop trains at reduced rates when you made this comparison for the Southern Railway?

A. Whatever happened is reflected in these figures.

Q. I want to know what you did?

A. I took the figures.

Q. You took the figures?

A. Yes.

Q. Did you take into consideration that troop movements in Alabama on the Southern moved under land grant rates?

A. That is reflected in the statements of our revenues, [fol. 1642] every condition that obtains is reflected in these figures.

Q. What was the amount of the military travel for the period which you have shown? I think you stated the month of April was used. What is the amount of the military travel for the month of April over the Southern in Alabama?

A. We didn't develop the military travel as a whole.

Q. You don't know anything then about the proportion of military passengers traveling, that is, in relation to the civilian passengers, do you?

A. I do not, I didn't need to know. That is why I didn't develop it.

Q. Did you take into consideration and can you tell me the amount and the number of passengers that moved in Alabama during the month of April, which you have used as an example on furlough movements?

A. On furlough movements, I haven't that detail with me.

Q. You haven't?

A. No.

Q. Have you taken into consideration here in your comparisons which you have made here for the month of April the round trip fares that were bought?

A. Oh, yes, we took into consideration every fare that is affected by this petition.

Q. That is the amount of the round trip fares for the month of April, do you know?

[fol. 1643] A. I don't know the amount, I haven't that in mind.

Q. Don't you take your work sheets with you when you go to a hearing?

A. No, we can't take box cars to transport records any more.

Q. Does it take a box car to figure out how many passengers you handled in Alabama in the month of April?

A. The box cars couldn't do the figuring, but the box car might be required to transport the records.

Q. If you had work sheets, these work sheets would be developed from the record, would they not?

A. The work sheets would be developed from the record over in our Atlanta office.

Q. You don't have these work sheets?

A. Not with me.

Q. And you don't know?

A. No.

Q. How do you know that the month of April is going to be representative?

A. We found that out that is why we made the test.

Q. I mean for the year 1933,—just wait awhile—for the year 1943.

A. We don't say it is going to be representative for the whole year 1943.

Q. How do you know that it was representative for the year 1942?

[fol. 1644] A. Because we made an investigation that satisfied us as to that.

Q. That was based on system averages?

A. No, that was based on Alabama intrastate travel, in Alabama.

Q. You have no knowledge of how the figures for the other lines were compiled, or how they were arrived at, do you?

A. No.

Mr. Bruce: Incidentally, Mr. Counsel, I want to examine whoever is here for the Louisville & Nashville Railroad, I want an explanation of the figures.

Mr. Oliver: We will call the witness, Mr. Bruce.

By Mr. Bruce:

Q. Now, have you included in these figures the earnings of the passenger trains, the so-called head end of the passenger trains?

A. In here?

Q. Baggage and whatnot?

A. Not on this page 4, no.

Q. Then how are you going to segregate the cost of operation against express and against passengers and against mail and against milk?

A. Are you talking about page 4 of the exhibit, or the exhibit as a whole?

Q. Page 4 and the exhibit as a whole. If you haven't made a segregation, how can you arrive at a cost?

A. We have made a segregation in the sheets of the [fol. 1645] exhibits as I explained, as between passenger and mail, baggage, express and milk.

Q. Have you made a compilation, a segregation as to the cost of operation on the movement of express or mail?

A. We have made no cost computations in here other than to show deficits, and so forth.

Mr. Oliver: The figures shown on page 4 are gross figures, aren't they, Mr. Tassin?

The Witness: Yes, I stated that before, they are gross.

By Mr. Bruce:

Q. In other words, they are inaccurate?

A. No, no, no, they are not inaccurate.

Q. What is the express revenue for the month of April in Alabama over the Southern Railway, and what is the cost of operation?

A. I will give you the express revenue for the year 1942.

Q. I am talking about April. You used April in the example. I want to know——

A. Express revenue has nothing whatever to do with sheet 4.

Q. Isn't it a passenger earning?

A. Not subject to the petition here. Nobody is asking here an increase in express or mail revenues.

Q. Isn't express, mail and milk, cream, aren't they adjuncts to the passenger movement?

A. Yes.

Q. And it moves on the same trains, does it not?

[fol. 1646] A. Yes.

Examiner Stiles: Mr. Bruce, this page 4 has nothing to do with this?

Mr. Bruce: No, but I am trying to find out, Mr. Examiner, whether this man knows what is the revenue. Of course, the rate of return would be decidedly different if he had used the ordinary adjuncts which travel on passenger trains, and added to the revenues, and the loss would be considerably different.

Examiner Stiles: Page 4 has to do only with the passenger fares here involved.

By Mr. Bruce:

Q. Now, Mr. Tassin, do you know whether there is any party movement, military party movement in the figures which you have arrived at here for the Southern in Alabama, traveling on a Government order?

A. Not of my personal knowledge.

Q. Is that included in these returns that you show here, the losses?

A. In these returns, all that is included is what is subject to the increase sought here, and not another copper cent.

Q. But you haven't the figures with you and you don't know what they are?

A. What?

Q. You haven't the figures with you and you don't know what they are?

[fol. 1647] A. I know they are not in there.

Q. No, and you don't have them in your possession here. I want to ask you this, with the exception of the years 1917, 1918, 1920, and possibly 1929 and 1930, did the passenger revenue on the Southern Railway ever pay its way?

A. I said as far as our lines are concerned, it was a deficit all the way back to 1921, the last war.

Q. Yes, sir, and your fares were about double what they are at the present time then?

A. Well, in the beginning, just following the last war, the increased passenger fares, as you will recall, were put into effect to make passenger fare a more equitable portion of the general transportation burden, but we began to lose traffic, and we had to reduce the rates.

Q. Now, in your studies that you have made, in the operation of the passenger trains, have you taken into consideration dining car service?

A. Yes.

Q. Has that ever shown a profit in the history of the Southern System?

A. In 1942 it does.

Q. That is the only year?

A. I have not specifically gone back. As a general proposition, I think there would be some others, probably.

Q. I am talking about within your knowledge.

[fol. 1648] A. I would say generally speaking it would be a loss. Volume is what gives us profit. When we haven't got the volume, you most always have a loss.

Q. Do you have any dining cars on your mixed trains that you operate in Alabama?

A. No.

Q. You used system averages in arriving at cost of operation, and included in the system averages are dining car expenses, are there not?

A. I have not made any computation of costs.

Q. I am asking you if you did include the cost of operation of your dining cars?

A. I have made no computations of costs.

Q. So you don't know?

A. I have not made the computations. I would know if I had chosen to make the computation.

Q. Will the same thing apply in regard to parlor and observation cars?

A. I have given a comparison of results of operations here. I have not gone into an analysis of costs, because it was wholly unnecessary. The results speak for themselves.

Q. Tell me, what revenue did you derive from an observation car on one of your streamliners?

A. If we sell the seats in there, we would get the seat fare. Under existing conditions we sell seats occasionally in observation cars. Otherwise, they are for the accom- [fol. 1649] modation of passengers who are traveling in sections of the train, other sections of the train, just as the dining car is.

Q. And you have no revenue from them whatsoever in ordinary times?

A. The revenue is derived from the sale of the tickets that entitles the passenger to the use of the car.

Q. And is the cost of operation of these observation cars included in your cost of operation shown throughout your exhibit?

A. There are no costs shown in this exhibit. They are revenue results. Now, the mileage made by dining and observation cars is what cuts that revenue per passenger carrying car down to 15 cents a mile. I have included the mileage of all cars that serve the passenger.

Q. Didn't you have to figure your cost of operation before you could arrive at a net revenue?

A. I have not used net revenue, I have used gross revenue.

Q. Well, in the gross revenue then?

A. When you deal with gross revenue, you obviously do not consider expenses.

Q. Why haven't you gone into expenses then? You appeared before the Commission. Isn't the Commission entitled to that information?

A. I am certainly endeavoring to give the Commission all the information that I think would be helpful to them. I [fol. 1650] showed them that up to and including 1941 there was a deficit from passenger operations; that in 1942 there was an income. Now, it doesn't interest them to go into

the minutia of costs, when the result is a deficit, when the cost is greater than the revenue.

Q. These results are computed from the book figures and not from the Commission's valuation?

A. The Commission's valuation has nothing to do with expenses and revenues.

Q. It certainly has when they come to make rates or fares. Now, you are familiar with the rate situation—or, rather I will ask you if you are familiar with the revenue, passenger revenues of the Southern Railway during the year 1936. Tell me what their revenue was then, if you know?

A. Yes, I think I can give you that.

Q. The operating revenue?

A. In 1936, the Southern had $9,869,700. That is account 102, passenger revenue.

Q. That was passenger revenue?

A. Yes, account 102.

Q. What was it in 1942?

A. In 1942 it was $36,265,338.

Q. In 1936 did you know that the passenger fares were 1.5 cents in coaches in Alabama throughout the state?

A. They were not 1.5.

[fol. 1651] Q. What?

A. They had been increased on February 10 to 1.65.

Q. No, what I mean in 1936, in 1936, did you know the passenger fares were 1.5 in coach movements?

A. I have not checked back to see what the fare was in 1936. I think Mr. Aiken can give those figures.

Mr. Bruce: Do you know what the fares were in 1936?

Mr. Oliver: The record shows that. Just what the fares were, Mr. Aiken testified to it in detail. If you want to know what the fare was on the Southern Railway in 1936, for your information I will say it was 1.5.

Mr. Bruce: 1.5?

Mr. Oliver: In coaches.

Mr. Bruce: In coaches?

Mr. Oliver: Yes.

By Mr. Bruce:

Q. How do you explain the fact that when your revenues were at the low ebb, operating revenue, that your fares were supposedly reasonable, and published voluntarily in

coaches at 1.5 cents per mile, and today when your revenues are extremely high—not extremely high, but are much higher, that you proposed to raise them to 2.2, which is a 33⅓ per cent increase over the basic fare of 1.5?

Mr. Oliver: Now, Mr. Examiner, the witness will answer if you care for him to, but I submit we are just wasting time to ask a statistical witness why the company wants to in- [fol. 1652] crease fares at this time. If you will read our petition, you will see why we are asking for this increase. I think we are just wasting time to have a witness testify, statistical witness to answer a question of that kind.

Mr. Bruce: This witness has made several very startling assertions in regard to revenue and income, and what not, and the policy of the company. He even went ahead and went into the future. He is the statistician of the Southern Railway. He knows what the operating incomes are, he should know anyway, I don't know whether he does or not, or whether his clerks do, but he is here testifying. I have a right to know why, if he can answer. If he cannot answer he can quickly say, "I don't know."

Examiner Stiles: Read the question.

(Question read.)

Examiner Stiles: I agree with Mr. Oliver that that to my mind is not a proper question to this witness. Mr. Oliver said if he wanted to answer it, he may.

Mr. Bruce: If the witness can't answer, he can state so.

The Witness: I can answer.

Mr. Oliver: Answer the question.

The Witness: The thing is that in 1936 the rate was a subnormal rate.

Mr. Oliver: That is the answer.

The Witness: Made to win travel back onto the railroads [fol. 1653] if possible from the private automobile.

By Mr. Bruce:

Q. Now, that you have the travel back, and there is no avenue of escape for them, for that travel, you desire to go back into a higher rate, is that right?

A. No, now that passenger is furnishing a volume of business somewhat comparable to freight, it should bear its equitable proportion of the general transportation burden.

Q. How about the future that you talked about, what is going to happen? You say you don't know and I don't think that I know.

A. There is no need for us to talk about it then.

Q. But you say you are planning on a long range basis?

A. I say that rates and fares are necessarily predicated on a long range situation and are not expected to vary from year to year.

Q. I am going to ask you—I don't know whether you know or not, but I am going to ask you if you were meeting some sort of competition, or trying to win away some travel from some other mode of transportation in 1936?

A. We were trying to get back such traffic, principally, from the private automobile.

Q. Today there are no tires for the automobiles, and there is only a gallon and a half of gas here and there, isn't that right?

A. That's right.

[fol. 1654] Q. And there is no available private passenger operation to speak of with the exception of a very few districts in the United States, isn't that right?

A. That's right.

Q. Now, presuming that that condition is bettered, the press carries a statement today that we will have rubber after the first of January, 1944, and there is a resumption of available passenger vehicles on the highway, what will you do then?

A. We will do what any intelligent business man will do, try to retain the volume of our revenues, to the best of our ability, whatever is necessary.

Q. Would that mean a reduction of rates?

A. I can't say. That doesn't fall within my province.

Q. What is your opinion as the statistical witness?

A. Based upon my observation as a statistician, any intelligent man protects his business to the limit of his ability.

Q. And would reduce rates to meet the competition?

A. When necessary.

Q. Today you don't have to reduce them though, you have got them?

A. Today if a man can mail himself a postage stamp and save walking a mile, it is certainly preferable to hoofing that mile.

Q. Now, these deficits that you show on page 5, do they include the operation of your observation cars and dining

[fol. 1655] cars, or are they based only on passenger movements?

A. No, they include everything, that is the final picture.

Q. Now, is the passenger service offered by the railroads, is that a part of a railroad system's service to the public?

A. Obviously.

Examiner Stiles: Mr. Bruce, is this a convenient point for you to recess?

Mr. Bruce: Yes.

Examiner Stiles: We will recess until 2 o'clock.

Mr. Bruce: Thank you.

(Whereupon, at 12:30 p. m., the hearing was recessed until 2 o'clock p. m.)

Afternoon Session

The hearing was resumed pursuant to recess. 2:00 p. m.

Examiner Stiles: Let's come to order.

Mr. Oliver: Mr. Examiner, I want to release Mr. Simpson unless somebody has some further questions to ask him. He wants to get back to the job at Birmingham, and I take it everybody is through with him, but I didn't want to let him go until we were certain about it.

Examiner Stiles: Who is that?

Mr. Bruce: We have no further questions.

Examiner Stiles: Who was it?

Mr. Oliver: Mr. Simpson. I would like to withdraw Mr. [fol. 1656] Tassin from the stand and let Mr. Gray put on his Illinois Central accounting witness. I think Mr. Bruce has a question or two to ask him. It is necessary for Mr. Sharpe to get away this afternoon, and if it is agreeable, I will withdraw Mr. Tassin for that purpose.

Examiner Stiles: All right.

Mr. Gray: Mr. Sharpe is our accounting witness to testify on cross examination as to the figures that went into the exhibit which Mr. Tassin put in.

JOHN L. SHARPE was sworn and testified as follows:

Direct examination.

By Mr. Gray:

Q. Give your full name and position?

A. John L. Sharpe, S-h-a-r-p-e. I am chief clerk of the Office of Auditor of Passenger and Station Accounts, Illinois Central Railroad, 6327 Dorchester Avenue, Chicago.

Q. Would you briefly state your experience, Mr. Sharpe?

A. I have been connected with the Illinois Central Railroad continuously since March 18, 1910, as clerk, special accountant, traveling auditor, and chief clerk in the Auditor of Passenger and Station Accounts office.

Q. Were the figures that were presented to Mr. Tassin for use in his exhibit prepared by you or under your direction?

A. The figures shown in page 4 of Mr. Tassin's exhibit were prepared under my personal direction.

[fol. 1657] Q. Which of the figures shown on that exhibit?

A. The figures shown on line 12, for the Illinois Central.

Q. Are those figures true and correct to the best of your knowledge and belief?

A. They are.

Mr. Gray: That is all. Your witness, Mr. Bruce.

Cross-examination.

By Mr. Bruce:

Q. For the year ending February 28, 1943, you show a loss of $361,769?

A. No, you are on the wrong line.

Mr. Oliver: That is the L&N.

The Witness: The line above that is the Illinois Central.

Mr. Oliver: Line 12.

The Witness: Line 12.

Mr. Bruce: Well, I had in mind the L&N. I made an error, Mr. Examiner, I wanted the L&N, the Louisville & Nashville witness, that is who I wanted. I wanted to have him explain to me the difference in the figures.

Examiner Stiles: You have no questions of this witness then?

Mr. Bruce: I am not concerned with $515, no, sir, that the Illinois Central shows.

Examiner Stiles: The witness is excused.

(Witness excused.)

Mr. Bruce: I want to question the accounting officer of [fol. 1658] the Louisville & Nashville Railroad.

Mr. Oliver: We will call him.

Mr. Bruce: And I offer an apology for calling this witness. I made an error.

Examiner Stiles: That is all right.

Mr. Bruce: That was my mistake.

Mr. Oliver: Will you come around, Mr. Tassin, please?

Examiner Stiles: You may proceed with your cross-examination, Mr. Bruce.

J. S. Tassin having previously been sworn, resumed the stand and testified further as follows:

Cross-examination.

By Mr. Bruce:

Q. Which is the sheet in which you show your index to prices? That is materials that you purchased?

A. That is on page 15 of my Exhibit 17.

Q. I presume that by "forest products" you mean ties and lumber?

A. Bridge timbers, and so forth.

Q. Bridge timbers, and so forth, and so on?

A. Yes, that is correct.

Q. Are the prices on these various commodities——

A. What is that?

Q. Are the prices on these various commodities frozen as of March 15, 1942, I mean forest products?

[fol. 1659] A. I haven't that information.

Q. You don't know?

A. No.

Q. And would the same apply to steel?

A. I have not informed myself as to the status of the prices. These are merely a comparison of prices paid, the index relationship of the prices paid by the railroad.

Q. Will you say this, can prices be increased at the present time under the price control act?

A. I am not an expert on that.

Q. Well, you are not familiar with the law at all relating to price control?

A. I only know what I see in the newspapers.

Q. And that would apply also to miscellaneous products?

A. Yes.

Q. And on fuel you show in December, 1941, that the price was 125 per cent?

A. Yes.

Q. Is that right?

A. Above what it was in 1936, 25 per cent higher than in 1936.

Q. That was over 1936?

A. Yes.

Q. And you don't know whether the prices on fuel are frozen?

A. No.

[fol. 1660] Q. And that would apply generally to anything that the Southern buys?

A. Yes, I am not on the staff of our purchasing agent.

Q. Now, in regard to labor costs.

A. Yes.

Q. When was the last increase that you had on train operation labor?

A. Well, n-w, I haven't in mind the last date, but if you will permit me, the figures on labor were computed from the schedule No. 561, employees services and compensation.

Examiner Stiles: That is the schedule in the report made to the Interstate Commerce Commission?

The Witness: To the Interstate Commerce Commission for each of these roads.

By Mr. Bruce:

Q. Do you have any knowledge whatsoever of the matters involved in Ex Parte 148?

A. I followed the proceedings through both the original and reopened hearings.

Q. Was an increase on labor granted in that proceeding, that is, was there an increase in labor cost granted by the Railroad Labor Board?

A. Yes, that was one of the occasions for the request for the increase in Ex Parte 148.

Q. Was that made retroactive to September, 1941?

A. It was made retroactive, I haven't the exact date in mind.

[fol. 1661] Q. Has there been any increase since then?

A. There may have been increases granted certain employees, but no prescribed increase.

Q. You mean employees that are under the Rail Labor Board jurisdiction?

A. No.

Q. That is what I mean.

A. This covers all employees.

Q. In other words, you could have raised the pay of a Division Superintendent, and maybe you have done that?

A. That is possible.

Q. But your actual labor has not been increased?

A. Not what we call the "agreement labor," contract agreement labor.

Q. Is that true also of your shop force?

A. That is true of all the union agreements.

Q. All of the other labor costs have been frozen, and you have had no increase therefore since September, 1941, with the exception of the supervisory force and clerical forces, some clerical forces?

A. Yes, possibly. That is approximately correct, I think.

Q. Was there an application which was submitted before the Railway Labor Board for increases in pay of certain employees with the railroads that were turned down by the Labor Board, Railroad Labor Board just recently?

[fol. 1662] A. I wouldn't say it was turned down.

Q. It was denied, was it not?

A. No, I wouldn't say it was denied. There is some question of its revision, I believe. It has not gone into effect at any rate.

Q. You don't know what your fuel cost is, that is, the coal cost per ton at the mine is?

A. At the mines?

Q. In Alabama, do you?

A. I haven't the figure in my mind.

Q. Do you know what your fuel cost is per ton at the mine in the Southern region?

A. I haven't that figure in mind.

Q. You talked about a cycle of depressions and you talked about 1932, 1942, and then you said something about 1952?

A. Yes.

Q. And you made certain predictions, that you do have depressions ever so many years, is that right?

A. I think experience bears that out.

Q. Then you stated that rate making should be based upon a long range proposition, is that right?

A. I think so.

Q. Is this the way that you—that is, is it your opinion that this long range planning should call for an increase in passenger fares at the present time, and would you [fol. 1663] continue that increase, or what would you do with it when you have this depression that you predict we will have come on?

A. Under any circumstances you would do the best thing according to your judgment at the time, and under the circumstances.

Q. How do you tie up these two statements that you have made, that you should be planning? You mean by that that you should better your reserves or what, anticipating a depression?

A. Well, take the particular—or take the present time. The intensified use of the properties is depleting them, and certainly after this intensive use is over, we shall need a substantial reserve to rehabilitate the properties.

Q. Now, in connection with all the equipment and facilities which you are providing at the present time for the handling of military movement, doesn't the Commission permit you to lay aside a certain sum to amortize what particular cost?

A. Over five years, we are permitted to amortize over a five-year period property purchased for the prosecution of the war.

Q. You are also anticipating your taxes, are you not?

A. We do that from month to month.

Q. You set aside what you may need?

A. We accrue to the best of our ability what the taxes are. We are required to do that under the methods of accounting prescribed by the Interstate Commerce Commission.

Q. Are you familiar with the decisions of the Commis- [fol. 1664] sion, and, particularly Commissioner Eastman's

assenting opinion in Ex Parte 148 reopened, the case in which he stated that, or made certain statements relative to the payment of taxes by the several carriers, excise taxes, income taxes, and what not?

A. I read the decision in Ex Parte 148 reopened.

Q. Are you familiar with the method of payment of excise taxes, the percentages that you pay at the present time, and income taxes also?

A. I am not our tax expert. We have a special department that handles taxes.

Q. Well, do you know as statistician, do you know what amount of income taxes was paid in 1942?

A. Our reports to the Commission segregate the amount of income taxes.

Q. Do you know what that is?

A. I can refresh my memory. This appears in Schedule 350, taxes on railway property, under the heading "U. S. Government taxes." The Southern Railway paid as payroll taxes $4,148,420, and as "other taxes," which would include income taxes——

Q. I didn't ask you that. You have that itemized. I want the income taxes that you paid in 1942. Now, tell me what it is?

A. I can't, other than as reported to the Commission, I haven't the figure in mind.

[fol. 1665] Q. I will read from the same report, line 41, U. S. Government taxes, and under the heading of income, $29,325,000.

A. All right, you have the information.

Q. And you paid that, you paid that in income taxes last year, the Southern System paid that?

A. The Southern Railway Company, this is not Southern Railway System.

Q. All right, Southern Railway Company. Do you know how much income tax you paid in 1942?

A. The same source would show it. I haven't the figure in mind.

Q. You don't know how much you paid for the first five months——

A. I don't carry all these figures in my mind. It is too small. We have too many figures to deal with.

Q. I will ask you this, if you will find the same item for me for 1941?

A. $5,910,000.

Q. In other words, you had an increase in your income taxes of approximately $24,000,000 in 1942 over 1941, didn't you?

A. If that is the difference.

Q. According to your report?

A. Yes, our reports are correct.

Q. If you have any added revenue over and above what you had in 1942, in 1943, will not your income taxes increase accordingly?

[fol. 1666] A. Oh, yes.

Q. Isn't that in line with what Commissioner Eastman stated, that the Commission had to take into consideration the earnings of the carriers?

A. Yes, and——

Q. And the payment of income taxes to the Federal Government?

A. Yes, the earnings that stick, after payment of taxes.

Q. Did he not state that he did not think that the collection of taxes is the proper medium of rate making, or words to that effect?

Mr. Oliver: Now, Mr. Examiner, obviously the report of the Commission and Mr. Eastman's statement which appears in the report will speak for itself, and I object to this examination of this witness on Mr. Eastman's statement in Ex Parte 148.

Mr. Bruce: I withdraw the question, and I will submit an exhibit which quotes what Commissioner Eastman said in Ex Parte 148, the reopened decision.

Mr. Oliver: Maybe we might object to it, I don't know. We will look at it.

By Mr. Bruce:

Q. Now, I will ask you this, you have had increases as shown by your exhibit for 1943, the first four months, is that right, or three months?

A. That is the last month of 1942 and the first three months of 1943.

Q. In other words, up to March, 1942?

[fol. 1667] A. 1943.

Q. 1943, rather?

A. Yes.

Q. If you have added income you pay added income taxes, would you not?

A. Obviously.

Q. And excise taxes also?

A. Whatever the taxes are, we will meet them.

Q. Your payroll tax has not been changed since 1942, has it—I mean since 1936, the percentage.

A. There is a sliding scale in there, but I am not familiar with the detail. I don't handle the tax matters.

Mr. Reynolds: Mr. Examiner, all of this is just a waste of time. I submit none of it is proper cross examination. I object to the whole kit and kaboodle.

Mr. Bruce: Mr. Examiner, this witness came in here and he is offering a one-sided exhibit. He has not shown taxes, he has not shown cost of operation. The only thing he has shown is revenue and alleged deficit. He is the statistician of the Southern Railway. He is thoroughly qualified, he has had long experience, and I don't think a witness should be permitted to sit on the witness stand and testify to what he wants to testify alone. These figures that he has submitted here are all based upon system averages. He has shown deficits, and he has shown operating revenues, [fol. 1668] and I think we have a right to inquire—if they have another witness who is better informed, I am willing to take him on and release this witness right now.

Mr. Reynolds: The point of it is the questions are not proper cross examination. The gentleman is asking questions the answers to which are perfectly obvious, and they have no bearing on the case anyway.

Examiner Stiles: What is the question that has been unanswered?

(The record was read.)

Examiner Stiles: Is there any other question unanswered?

The Reporter: No sir.

Examiner Stiles: Proceed with your cross examination, Mr. Bruce.

By Mr. Bruce:

Q. You don't have these figures, and you don't know, you are not familiar with the 1938 or 1936 railway retirement act, are you?

A. I don't carry it in my memory. I can inform myself of it at any time that I wish.

Q. Now, turn to that same item and tell me what your payroll tax was in 1941 and what it was in 1942?

A. You want 1941 first?

Q. Yes sir, if you please.

A. The payroll tax in 1941, railroad retirement tax in 1941 was $1,688,071. In 1942 it was $2,074,717.

[fol. 1669] Q. Would that indicate to you that your added taxes would be caused by the fact you have added employees?

A. Yes.

Q. And there has been no increases in that tax, have there?

A. I have stated——

Q. You don't know?

A. I don't know.

Q. Now, the figures that you give us on your passenger car miles in Alabama, what is that figure again? I have forgotten. Was that 145,000,000?

A. That was 1942, the 1942 figures?

Q. Yes.

A. 145,254,089.

Q. What is the same item in 1941?

A. 58,990,949.

Q. Did you have as much troop movements, or don't you know, in 1941 compared with 1942?

A. Not of my personal knowledge. It is common knowledge we didn't have as much in 1941 as in 1942. It is a matter of general common knowledge.

Q. Have you worked out any compilation, did you work out any compilation to show what your average passengers per car would be in 1941?

A. In 1941?

Q. Yes.

[fol. 1670] A. I will let you do it. I showed you how I did it in 1942. Supposing I give you the figures. Two million—do you want to take these figures?

Q. I want the number of passengers per car in 1941.

A. You have got to put the figures together and divide by——

Mr. Oliver: Mr. Examiner, just a moment. I object to the continued requests here now for mathematical calcula-

tions that counsel himself can make. If he wants the basic figures, all right.

Examiner Stiles: I suggest the witness give the basic figures and Mr. Bruce can compute it, and use it in his brief.

Mr. Oliver: All right.

By Mr. Bruce:

Q. All right, give me the figures.

A. For 1941?

Q. For 1941, yes sir..

A. I am looking at page 904, schedule 931, statistics of rail line and operations within the state; that is, of Alabama, Item 42, passenger coaches. The car miles are 2,480,382, the sleeping and parlor car miles were 900,665. That is Item No. 43. Then one half of Item No. 47, which would be one half of 373,606. Add those figures together and divided into Item 76, passenger miles, 58,990,949.

Q. In other words, about one half?

A. I should say so.

Q. The train miles in 1942—I mean in 1941 that you had in [fol. 1671] 1942.

A. Passengers per car in 1941 are substantially less than they were in 1942.

Q. Passengers per car?

A. Passengers per car, passengers,—passenger miles per car mile.

Q. Passenger miles per car mile.

A. Passenger miles per car mile.

Q. That is it?

A. Popularly referred to as "passengers per car."

Q. I don't remember your entire exhibit. Did you have individual revenues and expenses and net income on your exhibit covering each of the lines in the Southern Region?

A. No, not by individual lines, only those operating in the state of Alabama.

Q. That is for the Alabama operations?

A. No, the system operations of the lines operating in Alabama.

Q. Let's get into that annual report of yours.

A. All right.

Q. I want to know what your passenger revenues for 1941 were intrastate in Alabama.

A. I haven't that figure with me, but it is on file with the Alabama Commission.

Q. I beg your pardon, it is right in your own report.

[fol. 1672] A. Yes, but I haven't it with me.

Q. You have it right there?

A. Oh, your report? 1941?

Q. Yes.

A. You want passenger or freight?

Q. I want passenger.

A. On intrastate traffic, $229,617.

Q. Wait a minute, what was allocated or allotted besides that to the state of Alabama on so-called bridge traffic?

A. That is not bridge traffic, interstate traffic.

Q. Interstate traffic allotted to Alabama?

A. $825,937.

Q. Does that make a total of $1,055,000?

A. Five fifty four, correct.

Q. Look at the same item, keep that page out, take the same item in 1942.

A. All right, the intrastate, $451,005, and Alabama's proportion on interstate $2,452,268, total of $2,903,273.

Q. Your total revenues from passenger operations in 1941 were what? That would include mail, express and other passenger, milk, dining and buffet car, parcel rooms, storage, and packages?

A. Which year do you want?

Mr. Reynolds: Has the gentleman got an exhibit he is going to put in?

[fol. 1673] Mr. Bruce: I haven't the exhibit. I have information for my own purposes. I want this witness while I have him on the witness stand to verify these figures. I am going to offer them, yes.

Mr. Oliver: Mr. Examiner, the witness is verifying them by reference to the annual report. Mr. Bruce apparently has—the figures are prepared for his own purposes, and I assume he is going to put them in the record, I don't know.

Mr. Bruce: You betchu.

Mr. Oliver: But it seems to me we are wasting a lot of time. If he expects to cross examine really on matters that the witness has not testified to—I have not objected to it on that ground because I am willing for Mr. Tassin to give any information that is pertinent to the issues in this case, but I do think it is unfair now to everybody concerned to sit here and apparently cross examine this witness on in-

formation that he expects himself to put in this record. He made the statement he expected to put it in.

Mr. Bruce: My information, Mr. Examiner, is taken from that annual report. It is juratic, reports submitted to the Interstate Commerce Commission under orders of the Interstate Commerce Commission and in turn submitted with copies to this Commission and every Commission in the nation, in fact. These people are attempting to evade——

Mr. Oliver: I resent that.

[fol 1674] Mr. Bruce: I am going to have—now, just a minute, you are not intimidating anyone at all.

Examiner Stiles: Wait a minute.

Mr. Bruce: These figures are available in this report and this is the Southern Railway's report, and it is submitted under a jurat as being correct, and it illustrates very clearly——

Examiner Stiles: As I gather from what Mr. Oliver said, the figures that you are asking this witness to testify to, and have been for some minutes are figures which you extracted from those reports, and are going to put in as an exhibit, is that correct?

Mr. Bruce: I am not going to put them in as an exhibit, no sir. I am going to have a man testify on it from the information, he is one of my employees in my department. He will testify these are figures taken from this report, which is submitted by the Respondent, the Southern Railway System.

Examiner Stiles: If you are going to put them in as direct evidence, why put them in a second time through this witness on cross examination?

Mr. Bruce: I am testing the knowledge of this witness.

Mr. Oliver: I think he has demonstrated that he can read. Now, he has been reading these figures from the report. If that is the purpose of the test, all right.

Mr. Bruce: I am not insisting that he put them in. I am [fol. 1675] giving them an opportunity to put in their own figures.

Examiner Stiles: Mr. Bruce, you know what the Commission has had to say in its rules of practice about cumulative evidence, and you know what you were going to put in, I don't, so I am going to leave it to you to decide, but I am going to ask you to bear in mind the Commission's admonition to avoid accumulative evidence. If you are

going to put something in yourself, it certainly is cumulative to have the witness put in the same thing, and then you put it in over again.

Mr. Bruce: I had no intention of going into all of the Respondent's testimony. This man has testified for eleven respondents besides the Southern Railway. What I am trying to show here is that the information contained in this report, that they should have submitted to the Alabama Commission, and which they did not,—and that they are appearing here today with selected testimony, when, as a matter of fact, they had all of the information necessary to show the costs of operation within this state as to passenger or as to freight, and that they could show their taxes and whatnot from the very information that they themself-submitted under oath..

Examiner Stiles: But, Mr. Bruce, if they did not consider that a part of the case that they wanted to make, they had a right to make their case in the way they wished to do it. If that is a defect in the case, that is just too bad for them.

Mr. Bruce: I will withdraw the question.

[fol. 1676] Examiner Stiles: As I stated, if you will bear in mind the Commission's admonition about cumulative evidence, I will let you go on and use your own judgment, because you know what you are going to put in, and I don't.

Mr. Bruce: I think I have got a much better witness to explain this report anyway, Mr. Examiner, so I will waive further cross examination of the witness.

Examiner Stiles: Is there any redirect examination?

Mr. Miller: I have one or two questions, if you don't mind.

By Mr. Miller:

Q. Will you turn to page 6 of your exhibit, No. 17?

A. Yes.

Q. I note there in lines 7 and 10, that there are only two of those railroads listed there that did not come out of the deficit in 1942. Do you know of any reason for that?

A. No, I do not, except that they have not participated in the volume of business to the same extent that the other roads have. It is the obvious reason. They have not had the same increase in volume of business.

Q. In the case of the Atlanta, Birmingham and Coast, might that not be due to a circuitous route, and not competition with more direct carriers?

A. Well, of course it could be, it could be anything, and it could also be occasioned by the routes to military estab-
[fol. 1677] lishments, camps, fields, and so forth and so on, they may not be on the route that would carry the bulk of that volume.

Q. I notice now in these various exhibits you do not go into the first three months of 1943. In particular I am interested in the figures on pages 5, 10, 11 and 16. Will it be too much to ask you to furnish the figures for, say, for example, the first three months of 1943, or even later?

A. On page 5 we could not furnish information as to the passenger deficit, because that is computed at the end of the year.

Q. I see.

A. So for that reason we could not furnish that information for the three months. Now, what is the next page?

Q. Ten.

A. Page 10. The information can be furnished.

Q. And the same thing I believe is also true—I am not so much interested in 11, but I am particularly interested in 16, which of course is a reflection of some of the other figures.

A. On page 16, the only ratio that I can furnish for the first three months of 1943 is the total ratio. We haven't the split between passenger and freight. That is made at the close of each year.

Mr. Miller: I see. I would not be particularly interested in that then. If that is the case, I don't believe there is any
[fol. 1678] object in asking the witness to supply the information if it is not separated to any greater extent than he has given it, so I have no further questions.

Examiner Stiles: Is there any redirect examination?

Mr. Oliver: I have nothing further on redirect. I would like to offer Exhibit 17 of Witness Tassin.

Examiner Stiles: Exhibit 17 is received in evidence.

(Exhibit 17, Witness Tassin, received in evidence.)

Examiner Stiles: You are excused.

(Witness excused.)

Mr. Oliver: Mr. Kennedy, will you come around, please, sir?

WILLIAM F. KENNEDY was sworn and testified as follows:

Direct examination.

By Mr. Oliver:

Q. Mr. Kennedy, state your name for the reporter, please?

A. William F. Kennedy, Assistant Comptroller, Louisville & Nashville Railroad Company, Louisville, Kentucky.

Q. How long have you been Assistant Comptroller of the L&N Railroad?

A. I have been Assistant Comptroller of the L&N since about 1926, and I have been in the employ of the accounting department of the L&N for over 30 years.

Q. You furnished to Mr. Tassin, did you not, the figures [fol. 1679] appearing opposite line 13 on page 4 of the exhibit which has been identified as No. 17?

A. Yes, sir, that is correct.

Q. Are those forecasts of loss accurate to the best of your ability?

A. They are.

Q. Will you explain just how you arrived at the forecasted loss in revenue, please?

A. We originally received the request to furnish this data through the traffic department of the L&N, accompanied by an explanation of the manner in which the Southern Railway had computed similar information. They advised us that they had tested the matter, and had found that the month of April, 1942, in their opinion was fairly representative, as regards a separation of the total intrastate revenue as between that which would be subject to the proposed increases, and that which would not be so subject.

We conducted a similar test for the month of April, 1942, and found that the amount subject to the increase was approximately 92 per cent of the total Alabama intrastate revenue. We therefore applied that percentage to all of the subsequent months and carried it out to the month of March, 1943.

Examiner Stiles: That is you applied that to the total Alabama intrastate revenue?

The Witness: That is correct, yes, sir. We thereafter [fol. 1680] determined the percentage of loss that would be

involved by an actual analysis of the different classes of tickets under which the traffic moved in April, 1942.

We found that percentage, including Pullman traffic, that was subject to the increase, to be 32.57 per cent, in other words, if the proposed rates were to go into effect, the revenues would have been increased by that percentage.

That percentage was thereafter applied to each of the months after March, 1943. The aggregates produced the losses that appear on Mr. Tassin's exhibit, line 13.

Mr. Oliver: You may cross examine.

Cross-examination.

By Mr. Bruce:

Q. You say you made a test of the month of April, 1942?

A. That is correct, yes, sir.

Q. How did you make that test, Mr. Kennedy?

A. Why we have the conductor's reports that come in currently enclosing all of the tickets honored on trains. The men went right through the tickets and classified them according to the class of the ticket, determined the effect of the proposed increase on each class of ticket and worked out this composite picture, which as I stated before was a factor of 32.57 per cent, including Pullman tickets.

Q. Did you segregate the furloughed movement?

A. The furloughed movement is one of those that is not [fol. 1681] subject to the increase, and is thrown out.

Q. Did you figure the military movement, the party military movement moving under Government tickets on the rate which would be less than 2.2 cents per mile?

A. We had no occasion to segregate that. We put that in the pot as being affected by the increase in rates.

Q. In other words, the increase on the military movement would be the same as the increase on the civilian passenger movement?

A. Relatively, yes. You understand we have a figure here which we start out with as the intrastate revenue in certain months. That includes the military traffic. We found that the portion of that which would be affected in April was 92 per cent. We found the increase on the whole business would be 32 per cent. We therefore applied the 32 per cent.

Q. Does the L&N Railroad have land grant rates?

A. Yes.

Q. In Alabama?

A. On the main lines only, not on the branch lines.

Q. On that movement is the rate 50 per cent of the going rates plus the 5 per cent discount?

A. That is correct.

Q. And therefore the increase would not be the same, would it, on the military movement, as it would be on civilian passenger traffic?

[fol. 1682] A. No, sir. It still would be relatively the same, in a lesser amount.

Q. How did you arrive at the net loss? Is that a net loss or an operating loss?

A. That is the loss in the gross revenue, that is the total loss, it would be the loss.

Q. How did you deduct your expenses to arrive at your expenses?

A. Expenses don't enter into the question at all.

Q. Didn't you have any expenses in the movement?

A. There would be no expense—I would put it this way, there would be no expense— I will put this way, there would be no expense that arises from the mere fact that you propose to increase the rate. There is no increased expense involved in that whatsoever.

Q. But if you did handle the traffic, there would have been expenses, would there not?

A. We are going to handle the same traffic and increase the rate.

Mr. Bruce: I am afraid to ask this witness anything about his revenues in Alabama.

The Witness: You need not be afraid, I will answer you.

By Mr. Bruce:

Q. What?

A. I say you need not be afraid, I'll answer you.

Q. Do you have them?

A. Intrastate in Alabama?

[fol. 1683] Q. Yes, sir.

A. Yes, I have them.

Q. For the L&N Railroad?

A. For the L&N Railroad.

Q. What was your operating revenue for 1941 pertaining to passenger movements in Alabama?

A. Intrastate now you have in mind?

Q. Intrastate, including so-called allocated, interstate allocation?

A. I am sorry, I haven't got 1941, I have got 1942 here.

Q. Have you got 1942?

A. Yes, I have 1942, starting with the month of March, running from March, 1942, to March, 1943.

Q. What was that?

A. Twelve months ended February 28, 1943, it amounted to $1,202,390.

Q. That is intrastate alone?

A. Yes, sir.

Q. What was the bridge traffic, I mean what was the allocation?

A. Interstate assigned to Alabama, I don't have that figure. It is in the Alabama report. The correct figure is in the Alabama report.

Q. All right, that's all I have, unless you want to go into your own report. If you want to go into that to get the [fol. 1684] figures, I will be glad to have you do so?

A. I don't want the figures.

Mr. Bruce: All right.

Examiner Stiles: Mr. Kennedy, I was curious as to why the L&N shows so much greater loss than the Southern System, when their mileage is less than the L&N—the Southern System mileage. Could you give any key as to that?

The Witness: Yes, sir. It is true that the Southern mileage, including the AGS, is only slightly different from the L&N. The difference there however lies in the fact that the L&N intrastate revenue in Alabama is so much greater than, relatively, than the Southern Railway. For example here——

Examiner Stiles: My question goes to why that should be.

The Witness: Well, I don't know, I couldn't tell you.

Examiner Stiles: Did you have more commutation traffic on your road?

The Witness: No, sir, we have no special commutation traffic in Alabama that would cause that. Our tariffs are just along similar lines. It is what you might call "run of mine" intrastate passenger traffic. We have no special rate traffic or anything of that kind. We just do more business than they do intrastate.

Mr. Reynolds: You serve all of the large cities of Alabama like Birmingham, Montgomery, Montgomery and Mobile, do you not?

The Witness: That is right.

[fol. 1685] Mr. Bruce: Doesn't the Southern?

Mr. Oliver: They don't serve Montgomery. They do serve Birmingham and Mobile.

Examiner Stiles: That is all.

(Witness excused.)

Mr. Reynolds: I would like to ask Mr. Bruce if he cares to examine the accounting witnesses of any of the other Respondents.

Mr. Bruce: No, I have got all the other information I need out of this thing (indicating).

Mr. Reynolds: In view of that, Mr. Examiner, I am going to tell the accounting witnesses of the roads that I represent that they may be excused.

Examiner Stiles: There is no one here that wants to examine any of the other accounting witnesses is there? Is that correct?

(No response.)

Examiner Stiles: You may excuse all of those witnesses.

Mr. Lott: I assume that applies to the Gulf, Mobile & Ohio accounting witness also, who is here present?

Examiner Stiles: Apparently it applies to all of the Respondent carriers.

Mr. Lott: Thank you, sir.

Mr. Bruce: I might warn counsel that I am going to place in the record figures on operating costs, and that I am [fol. 1686] going to have certain information that I am going to furnish the Commission with in this record as to your revenues in Alabama, and what not.

Mr. Oliver: So far as I am personally concerned, Mr. Bruce—you need not put this on the record.

Examiner Stiles: Suspend the record.

(Discussion was had off the record.)

Mr. Oliver: Now, Mr. Examiner, that completes our presentation.

Examiner Stiles: All right, we will take a brief recess.

(A short recess was taken.)

Examiner Stiles: Let's come to order. Mr. Bruce, will you call your witness?

Mr. Bruce: Mr. Examiner, may I call witness Waldrop, please?

[fol. 1687] W. W. WALDROP was sworn and testified as follows:

Direct examination.

By Mr. Bruce:

Q. State your name and address, please?

A. W. W. Waldrop.

Q. Spell that for the Examiner.

A. W-a-l-d-r-o-p; inspector, Alabama Public Service Commission, Montgomery, Alabama.

Q. Where do you live, Mr. Waldrop?

A. I live at Millport, Lamar County.

Q. Whom are you employed by?

A. Alabama Public Service Commission.

Q. In what capacity?

A. Inspector.

Q. What are your duties?

A. Well, they are generally in the following up of complaints, inspecting buses and trains, making investigations on various utilities. There is quite a category of work that I am called on to do.

Q. About three weeks ago were you instructed to make certain investigations about the passenger trains in Alabama that you have had occasion to ride on, and to inspect, in connection with the discharge of your duties?

A. I was.

Q. Have you made such inspection?

A. I have.

[fol. 1688] Q. Have you segregated your inspections as to railroads?

A. At your suggestion,—I beg your pardon; as to which?

Q. As to railroads; and do you have them as to dates?

A. As to dates, yes.

Q. Do you have a copy of your inspection report which you submit to the Commission in your possession at this time?

A. I do.

Q. Proceed and tell the Commission or the Examiner what you found on the trains, starting with the first date that you made an inspection, as regards the load on these passenger trains in Alabama?

A. Well, I was instructed in my regular routine of duties to check the traffic on the various trains and buses that I might have occasion to ride doing that routine work, to check them as to the number of passengers aboard, the number that had to stand, and the number that might be left at various places, that couldn't get aboard this mode of transportation.

And I have checked more or less the trains I had to ride all during the month of June, and I believe my first check would indicate I rode an L. & N. Railroad train to Mobile, Alabama.

Q. From where?

A. From Montgomery to Mobile.

Q. On what date?

A. That was on 6/1/43. This train consisted of eight [fol. 1689] cars, eight passenger cars, of 80 persons capacity. And I made two checks, one between Montgomery and Flomaton, and one between Flomaton and Mobile.

Apparently we unloaded about as many at Flomaton as we took on; we had practically an even load along there. We had 783 passengers, 143 standing approximately all that distance.

Q. That is between Montgomery and Mobile?

A. Between Montgomery and Mobile.

Q. Was this inspection made in the regular course of your duties? You didn't select that particular train, did you, Mr. Waldrop?

A. How is that?

Q. You didn't select that particular train, did you?

A. No, no, I had to go to Mobile on other business.

Q. And you made an inspection en route?

A. I did.

Q. What is your next inspection?

A. Next, I came back from Mobile. I rode the train out of Mobile, the L. & N., over the same route, coming back.

Q. Do you have the number of the trains?

A. One is No. 1 and the other is No. 4.

Q. Which was the first train that you made an inspection of?

A. The one to Mobile is No. 1, and No. 4 is coming back to Montgomery.

Q. State what you found on train No. 4.

[fol. 1690] A. Well, from Mobile to Montgomery, the vestibules, the aisles and the smokers and all were full. We had 840 passengers on my last check between Georgiana and Montgomery.

Q. How many were standing?

A. 640—about 200 people, 640 would have been the capacity, about 80 to the car, with 8 cars.

Q. On what date did you run from Mobile to Montgomery?

A. That was on the second.

Q. The next day?

A. Yes sir.

Q. That was on the L. & N. also?

A. The L. & N. also, yes sir.

Q. All right.

A. My next train was the G. M. & O., to Tuscaloosa.

Q. From where?

A. From Montgomery to Tuscaloosa. That is No. 116.

Q. What date was that?

A. They have a local train there, that has a coach and a car. They have one white passenger coach and one combination coach, and they were full, but comfortably seated on this particular train at this time. That was on the 5th, 6/5th.

Q. Was that a Diesel operation?

A. That train leaves here at 6:45.

Q. That was a Diesel operation?

A. Yes sir.

[fol. 1691] Q. And the next investigation you made was when?

A. My next one was from Millport to Birmingham, on the 6/11th. That was train No. 11.

Q. On what line?

A. Southern Railway from Columbus, Mississippi, to Birmingham. That is also a local run. They had three cars at the time, local.

I rode that train from Birmingham to Columbus—I beg your pardon if I said Columbus to Birmingham. There were three cars local, and they were full to their capacity out of Birmingham, but as they go on down, that was local

traffic, and they thinned out considerably. When I got to Millport there was plenty of room.

Q. What was the next investigation that you made?

A. Next I caught a midnight train out of Demopolis, Frisco from Demopolis to Atmore. I left Demopolis at 2 o'clock. Now on that train they had a few seats at Demopolis. They had a few seats in Atmore. None were standing. But passengers and conductors on the road told me that they were standing out to Aliceville, out of Columbus, Mississippi. This night train is a local train and goes into Florida, across by Atmore. I didn't ride when they had them standing. They were comfortably seated at the time I was on it. That date was the 6/18th.

Mr, Oliver: That was June 18th?

The Witness: Yes.

[fol. 1692] By Mr. Bruce:

Q. Will you continue?

A. On the 6/20th I rode the Central of Georgia from Montgomery to Savannah.

Q. From where?

A. I rode that to Opelika.

Q. State what you found?

A. I found three coaches, and the white people were seated. There were two standing in the colored coach.

Q. What is that train number?

A. No. 16.

Q. State your next inspection?

A. Well, I next rode the Atlantic Coast Line, from Brundidge to Montgomery. That was the 6/23rd.

Mr. Reynolds: What are those points?

The Witness: Brundidge, Alabama.

Mr. Bruce: To Montgomery.

Mr. Reynolds: Brundidge from Montgomery?

A. Brundidge to Montgomery.

By Mr. Bruce:

Q. Will you state the date?

A. 6/23rd.

Q. All right, proceed. What did you find on that train?

A. I found it was a local train, No. 189, and it was loaded, but all could be seated. There was always somebody up

walking around, but there was a seat here and there that could have been occupied that would take care of the crowd [fol. 1693] and give them seats.

Q. Continue with your next inspection?

A. I then rode the G. M. & O. from Tuscaloosa to Montgomery, train 109. And after you pass Tuscaloosa,—I boarded it at Reform. And that train has seats from—in other words the crowd out of Mississippi, and so forth, is unloaded in Tuscaloosa, always, and leaves you some seats until you get near Montgomery, that ordinarily fill the capacity. This local traffic in and out of the main points I find has considerably congested them for a distance out each time.

Q. What was the condition of the train on arrival at Montgomery?

A. Full, but none standing on this particular trip.

Mr. Lott: What was the date of that?

The Witness: What?

Mr. Lott: What was the date of that?

The Witness: 6/20/43.

Mr. Bruce: What was the next inspection?

Mr. Lott: The 20th?

Mr. Bruce: 6/20/43.

Mr. Lott: That is when he was in Opelika.

Mr. Oliver: He had Montgomery to Opelika on the 6/20th.

By Mr. Bruce:

Q. Continue. What was the next inspection?

A. On the 6/23rd I rode the Western Railway of Alabama, and left here at 6:30 p. m. and went to Opelika. All [fol. 1694] cars were full; there were some thirty people standing, but I checked the seats over the car that would practically have seated those passengers, but it would have been full at that time.

Q. Were these cars air conditioned on that particular train or not?

A. Some are. I don't know about that particular train; I didn't check that. It was a local train, and it had one Pullman and five white coaches and one Negro coach.

Q. Were the white passenger cars air conditioned; do you know, did you find out whether the white passenger cars were air conditioned?

A. No, I don't remember checking that particular thing.

Q. Continue with your next inspection.

A. That night I rode the Central of Georgia from Opelika to Columbus, Georgia. I left Opelika, due out of there at 9:45. I rode the first section of No. 10, which at that time had five Pullman cars, five day coaches, and a colored coach, three troop cars. The Pullmans were all full. The day coaches I checked front from the rear. In No. 1 and 2 they were all seated; in three there were six standing; in four there were eight standing; in five there were five standing; or fifteen standing in all on that train.

Q. Continue with the next one, and go right along.

A. The next morning, 6/24th, I rode the Central of Georgia from Columbus, Georgia back to Opelika, and the colored coach had ten seats in it; six seats in the first coach [fol. 1695] for whites. The rest of the day coaches were all full. There were five Pullman cars in all, I think, on that train.

Mr. Reynolds: Were any standing on that train?

The Witness: No sir. That is the same train I think that wrecked just out of Birmingham during that day.

By Mr. Bruce:

Q. Continue with your next inspection.

A. I rode the Western of Alabama on the 24th, from Opelika back to Montgomery. They had all of those cars well loaded, but they were standing only in one car, and the diner I think had only two or three seats in it, which would apparently cause more than one car with some standing in it when those people got back to their seats, unless they had all been from the Pullman, and I couldn't check that; I didn't know where those diner customers were from.

Mr. Reynolds: Were any people actually standing when you checked the train?

The Witness: How is that?

Mr. Reynolds: Were any people actually standing when you checked the train?

The Witness: Eight in one coach I think that I mentioned there.

By Mr. Bruce:

Q. The next one.

A. Next I rode the G. M. & O. again on the 24th. They were full, but were comfortably seated.

Q. Where from and to?

[fol. 1696] A. From Birmingham—or Montgomery to Reform.

Q. Continue.

A. On the 6/27th I rode the Southern train from Millport to Birmingham. There were plenty of seats when I boarded the train, and the cars filled up and at Parish they took on another car, and I found them all seated after that. That was Sunday morning.

I rode the Southern train No. 19 from Birmingham to Mobile that same day. They were full, but all could be seated out of Birmingham. They added a car at Selma, and in meeting train No. 20 from Mobile to Birmingham, they were very—I didn't get to make a detailed check, but they were very heavily loaded, and had added two coaches at Selma.

Q. Were people standing in that train?

A. Yes sir.

Q. Very many or just a few?

A. It just looked to be about six or eight in about the two front coaches.

Q. Is that all the investigations that you made?

A. That is all the trains that I have ridden on this check.

Q. Did you make an investigation of the buses, about the same time?

A. I did.

Q. What did you find in regard to the buses?

A. I find the buses generaliy are loaded to the brim, [fol. 1697] and as many, or as some of the companies won't allow but fifteen to stand on a bus, though I have seen some buses of 29 capacity that I counted sixty people on them.

In various ridings we go from—we will start out of Montgomery, for instance, to Birmingham, and you will have sixteen to eighteen standing until you get as far as Wetumpka, and they unload, and then you possibly might get a seat, but before you got into Birmingham you would have them standing again. But the buses are in and out with a much heavier load than any of the local trains. Now the through trains and the trains going to larger points are standing at all times.

Q. There are practically altogether local trains that you checked?

A. Yes.

Q. You didn't check any streamliners?

A. No sir, I don't ride the streamliners.

Q. And you didn't make any investigation of other through trains, excepting the local trains?

A. The local trains. I did this in my regular routine of work. Most of it has come in places going to the smaller towns, instead of to the larger towns.

Q. You don't travel on week ends, do you?

A. No sir, except last Sunday, I rode the Southern trains Sunday.

[fol. 1698] Q. All of your investigations were made during the week, were they?

A. Mid-week, most of them.

Q. And all during mid-week?

A. Yes sir.

Q. Do you have anything to add? You have in your possession bus investigations?

A. Yes sir.

Q. You have also a written record on bus investigations, do you?

A. Yes sir.

Mr. Bruce: That is all. You may cross examine?

Mr. Oliver: I have no questions.

Mr. Reynolds: I want to ask you one question.

The Witness: All right sir.

Cross-examination.

By Mr. Reynolds:

Q. I understood you to testify that on the 20th of June, which was Sunday, that you rode the Central of Georgia from Montgomery to Opelika.

A. No, I did not. I was in Montgomery. If I said I rode that train I was in error. I had this memorandum book, and I have made a memorandum of each instance. On Sunday the 20th I didn't leave Montgomery, I checked those trains out of the station at Montgomery, and checked the bus out the same way to get some Sunday traffic on my [fol. 1699] bus schedule. About four o'clock I went down to the depot.

Q. What Central of Georgia train, if any, did you check out of Montgomery on Sunday the 20th?

A. That was the one going—it didn't go to Opelika, it went the other way, because I rode the train that I checked to Opelika.

Q. The Central of Georgia doesn't run from Montgomery to Opelika, does it?

A. No, the Western does. The Central went towards Troy. I was standing talking to the conductor and checked that train when they went out. I don't know my geography very well on those routes, as to where they run.

Q. When did you check the train, in the morning?

A. In the evening, five something.

Q. And it was going towards Troy?

A. Yes sir.

Q. What did you find?

A. They had three coaches. There were two standing in the colored coach, and the whites were all seated. That was out of Montgomery.

Q. You don't know how long that condition lasted?

A. No, I do not.

Mr. Reynolds: I have nothing further.

Mr. Lott: I have no questions.

Examiner Stiles: You are excused.

[fol. 1700] (Witness excused.)

Mr. Bruce: I will call Mr. Ohme.

Conrad H. Ohme was sworn and testified as follows:

Direct examination.

By Mr. Bruce:

Q. State your name and address, please, Mr. Ohme.

A. Conrad H. Ohme.

Q. Spell it?

A. O-h-m-e. 1729 South 14th Avenue, Birmingham 5, Alabama. I am Public Service Inspector, for the Alabama Public Service Commission.

Q. How long have you been employed by the Commission?

A. Something over twenty years.

Q. Has that been on the same job?

A. Yes sir.

Q. Did I instruct you to make certain investigations during the month of June relative to the train loads, and the conditions on these trains?

A. On May 24th you instructed me that in my routine inspections, in addition to the general inspection, to note if all passengers were able to get seats, and if not, actually count the number of passengers that had to stand, which I have done during that period.

Q. Go ahead.

[fol. 1701] A. Since then I have inspected 56 trains; one G. M. & O. train, one A. B. & C. train, one N. C. & St. L. train, three Illinois Central trains, two Seaboard Air Line, two Central of Georgia, five Atlantic Coast line, seven Western of Alabama, two Frisco, sixteen L. & N., two A. G. S., and fourteen Southern.

The total number of trains out of that 56 that had passengers standing were 28, and 28 of them did not have passengers standing. The total number of passengers that were standing on those 28 trains was 1097.

Now, I have it here by trains, arranged by different companies. Do you want me to give this?

Q. Yes, go ahead.

A. On June 17th I rode the G. M. & O. train from Maplesville to Montgomery. I made my inspection at Maplesville at 3:09 p. m. That was train No. 109. There was no one standing on that train.

Q. Was the train loaded?

A. Fairly well, but there were several vacant seats. On June 27th I inspected at Birmingham the A. B. & C. train, No. 23, which leaves Birmingham at 2:50 p. m. There were no passengers standing on this train.

Now they have two trains on that road, trains 22 and 23 operating in Alabama. No. 22 comes into Birmingham, and is due in Birmingham at 11:28 a. m., and 23 is due to leave [fol. 1702] there at 2:50 p. m. Those are mixed trains; in other words, they are freight trains with two passenger coaches and a baggage car attached to the rear end of the freight train. These are old wooden coaches, not air conditioned. No one was standing on this particular train.

On June 24th I rode the N. C. & St. L. train from Attalla to Gadsden. That was train No. 199. I boarded that train at Attalla and made the inspection there at 1:45 p. m. There was no one standing on that train. In fact

there weren't any passengers—I believe there was one passenger only. This is also a mixed train,, having one coach, part of it for colored passengers, and part of it for white, and part of it for express and mail. It is a combination coach, old wooden coach, non air conditioned.

Q. Were you instructed to particularly make inspections on these smaller lines?

A. On any of them as my regular duties called me.

Q. You were not to select any train?

A. That is my duty, to make these inspections, and I am constantly on the go. I just took these just as I ordinarily did.

Q. All right, proceed.

A. On May 26th I rode the Illinois Central Railroad train from Birmingham to Jasper, train No. 10. I inspected it at Jasper at 2:55 p. m. While this train was [fol. 1703] pretty well loaded, there was no one standing.

On May 26th I rode the Illinois Central train No. 9 from Jasper to Birmingham, making the inspection at Jasper at 3:32 p. m. This train was loaded, but no one standing.

On June 22nd I rode the Illinois Central train from Jasper to Birmingham, train No. 9. I made the inspection at Jasper at 3:37 p. m. There was no one standing on that train, but it was well loaded.

On June 22nd I rode the Seaboard Air Line train from Birmingham to Piedmont, Alabama, train No. 6. I inspected this train at Piedmont, at 10:10 a. m. There was no one standing on this train, and they had plenty of room. There was one coach, Seaboard Air Line coach, not air conditioned, and they had an Atlantic Coast Line coach on there that was not air conditioned, and they had a Richmond & Washington coach that was not screened and not air conditioned,

On June 22nd, the same day, I rode train No. 9 from Piedmont to Birmingham. I made the inspection at Piedmont at 10:32 a. m. There were eight passengers standing. This train had two coaches that were not air conditioned.

On June 13th, that was Sunday, I rode the Central of Georgia train from Birmingham to Childersburg. It was the first section of train No. 10. I made the inspection at Childersburg at 6:08 p. m. There were six passengers standing.

On June 13th, the same day, I rode train No. 1, Central [fol. 1704] of Georgia, from Childersburg to Birmingham. I made the inspection at Childersburg at 6:45 p. m. No one was standing on that train.

On June 14th I rode the Atlantic Coast Line train from Brundidge to Montgomery. I made the inspection at Troy. That was train No. 189. The time of the inspection was 4:33 p. m. There were fourteen people standing on that train.

There was one coach, No. 1078, on which the air conditioning was not working, and consequently the coach was hot. Coach No. 961 was a wooden coach, and not air conditioned.

On June 14th I rode the Atlantic Coast Line from Montgomery to Dothan. I inspected this train at Troy. That was train No. 58, and the time of the inspection was 8:20 p. m. There was no one standing on this train. It was fairly well filled, but there were some few vacant seats.

On June 15th I rode the Atlantic Coast Line train from Troy to Sprague. I made the inspection at Troy, of train No. 57 at 6:55 a. m. There were 21 people standing on that train.

On June 15th I rode the Atlantic Coast Line train from Sprague to Dothan. I made the inspection at Sprague, train No. 180, at 8:13 a. m. There was no one standing on that train, and there were considerable vacant spaces. This also had a wooden coach. In fact it was the same coach that was on the train the night before. It was coach No. 1078 that the air conditioning was not working on. [fol. 1705] And coach No. 961 was an old wooden coach, with no air conditioning equipment on it.

On June 15th I rode the Atlantic Coast Line train from Dothan to Montgomery and inspected it, at Dothan. It was train No. 189. I made the inspection at 3:57 p. m. There were sixteen passengers standing.

On June 15th I observed at Sprague the coach that runs between Sprague and Luverne, which is a wooden combination coach attached to the freight train.

On the same day, June 15th, I observed the coach that is operated in the branch line between Elba, Grimes and Abbeville, and that is an old wooden combination coach, attached to a freight train.

Q. Is that operated on a mixed train, freight train?

A. Mixed freight train, yes sir, just a wooden coach attached to the rear of the freight train.

On June 17th I rode from Montgomery to Opelika on the Western Railway of Alabama, and I made the inspection at Montgomery, train No. 36, at 7:30 p. m. There were 67 passengers standing. There was one wooden coach that was not air conditioned, coach No. 19.

On June 18th I rode from Opelika to Milstead on the Western Railway of Alabama. I made the inspection at Milstead of train No. 35, at 10:22 a. m. No one was standing on that train.

[fol. 1706] On June 18th I rode from Milstead to Opelika. I made the inspection at Milstead of train No. 32, at 10:40 a.m. No one was standing on that train.

On June 18th, on that same train, there was a non air conditioned coach.

Then again on June 18th I rode from Opelika to Montgomery and made the inspection at Montgomery of the Western Railway of Alabama train No. 32, the inspection being made at 4:45 p.m. and there were 30 people standing on the train.

On June 18th I rode Western Railway of Alabama from Montgomery to Opelika, and made the inspection at Montgomery of train No. 36, at 7:10 p.m., and there were 22 people standing on it.

This train carried an L. & N. coach which was not air conditioned, and also Western Railway of Alabama No. 19, a wooden coach, that was not air conditioned.

On June 18th I rode the Western Railway of Alabama from Opelika to Montgomery, and made the inspection at Opelika, of train No. 33, at 10:53 p.m., and there were 41 standing. This train also had a wooden coach that was not air conditioned.

On June 19th I inspected Western Railway of Alabama train at Montgomery, train No. 34, at 2:50 a.m. There were 26 passengers standing.

On May 26th I made an inspection of the Frisco train at Birmingham, train 105, at 1:05 p.m. There was no one stand-

[fol. 1707] ing on that train when it pulled out.

On June 22nd I rode the Frisco train from Birmingham to Jasper, and made the inspection at Birmingham, train 105,

leaving Birmingham at 1:35 p.m. There were 74 standing on that train.

On May 25th I rode from Birmingham to Calera, and made the inspection at Calera of L. & N. train No. 1, at 7:55 a.m. There were 49 passengers standing.

On May 25th I rode L. & N. train from Calera to Birmingham, and made the inspection at Calera of train No. 2 at 9:50 a.m. There was no one standing on this train. In fact, they had a good deal of vacant space.

On May 26th, at Birmingham, I inspected L. & N. train No. 2 at 12 noon. There was no one standing on this train, and there was some vacant space.

On June 2nd I rode from Birmingham to Montgomery on the L. & N. for the purpose of making an inspection at Clanton of train No. 1 at 9:20 a.m. There were 89 passengers standing on this train.

On June 7th I rode from Birmingham to Montgomery on the L. & N. and made an inspection at Birmingham, train No. 1, at 7:55 a.m., and there were 82 passengers standing.

On June 8th I rode L. & N. train from Montgomery to Birmingham, and made the inspection at Montgomery of train No. 4 at 7:55 p.m. There were 44 standing.

[fol. 1708] On June 9th I rode L. & N. train from Birmingham to Montgomery, made the inspection at Birmingham of train No. 1 at 7:55 a.m. There were 53 standing.

On June 9th I rode the L. & N. train from Montgomery to Birmingham, and made the inspection at Montgomery of train No. 4, at 6:45 p.m., and there were 19 standing.

The floor of this train was very dirty. It looked like it had not been cleaned in some distance. The train came up from Mobile, and after the train left Montgomery going towards Birmingham the porter cleaned it up.

On June 14th I rode the L. & N. from Birmingham to Montgomery, made the inspection at Birmingham of train No. 1 at 7:55 a.m., and there were 27 passengers standing.

On June 19th I rode the L. & N. from Montgomery to Birmingham, made the inspection at Birmingham, train No. 98, at 5:50 a.m., and there were 125 passengers standing.

On June 21 I rode the L. & N. train from Birmingham to Montgomery, made the inspection at Birmingham of train No. 1 at 7:55 a.m., and there were 43 standing.

On June 22nd I rode the L. & N. train from Birmingham to Athens, made the inspection at Birmingham of train No. 4,

at 9:50 p.m., and there was no one standing on that train. There were four coaches on that train that were not air conditioned at that time.

On June 23 I rode the L. & N. train from Birmingham to [fol. 1709] Decatur, or from Athens to Decatur. I made the inspection at Athens of train No. 25, at 4:57 a.m., and there were eight passengers standing. And there were three coaches that were not air conditioned on that train.

On June 23rd I rode the L. & N. train from Athens to Birmingham, and made the inspection at Decatur, train No. 3, at 1:31 p.m. There was no one standing on that train, and they had some space to spare.

On June 24th I rode the L. & N. train from Gadsden to Birmingham, and made the inspection at Gadsden of train No. 86 at 3 p.m. No one was standing on that train. They had plenty of room.

On June 25th I rode the L. & N. train from Birmingham to Montgomery, inspected it at Calera, train No. 1, at 8:46 a.m. and there were 65 passengers standing on this train.

On June 13th, which was Sunday, I rode from Birmingham to Fort Payne, on the A. G. S. Railroad, and made the inspection at Birmingham as the train left Birmingham, train No. 42, at 7:30 a.m., and there were eight passengers standing.

On June 13th I rode the A. G. S. train from Fort Payne to Birmingham, and made the inspection at Attalla of train No. 17, at 12:23 p.m., and there was no one standing on that train.

On June 10th I rode the Southern Railway from Birmingham to Wilton. I made the inspection at Wilton of train No. 19 at 12:45 p.m. There was no one standing on that [fol. 1710] train. There were a few vacant seats.

On June 10th I rode the Southern Railway from Wilton to Birmingham, and made the inspection at Aldridge, train No. 20 at 1:40 p.m.; no one was standing there, and there was plenty of vacant space.

On June 11th I rode from Birmingham to Pell City, and made the inspection at Birmingham of Southern Railway train No. 40, at 9:10 a.m., and there were 40 standing.

At Birmingham they were not able to carry all the colored passengers. They left them there because the train, the colored compartment was crowded, and they left quite a few of them.

On June 11th I rode from Pell City to Birmingham, inspected the train at Pell City, Southern Railway train No. 7, at 11:40 a.m., and there were 39 passengers standing.

On June 11th I rode from Birmingham to Parish on the Southern Railway, and made the inspection at Parish of train No. 11 at 6 p.m. No one was standing on this train, but this train had a non air conditioned coach that operates between Birmingham and Sheffield, carried on train No. 11 to Parish, and there switched onto the train on the Northern Alabama Division. This coach was not air conditioned.

On June 11th I rode from Parish to Haleyville, and made the inspection at Haleyville of Southern Railway train No. 2 on the Northern Alabama Division, at 6:30 p.m. No one [fol. 1711] was standing on that train. This, in addition to the other train, had this non air conditioned coach that came from Birmingham.

On June 12th I rode Southern Railway train from Haleyville to Parish, and made the inspection at Nauvoo, train No. 1, at 7:37 a.m., and no one was standing. This also had a non air conditioned coach which carried passengers on to Birmingham, and at Parish it was switched onto train No. 16.

On June 12th I rode from Parish to Birmingham, made the inspection at Littleton, train No. 16, at 9:53 a.m. There were four passengers standing.

Now this train is an air conditioned train, except that it had this Southern Railway coach coming from Sheffield to Birmingham. It was attached to the rear of the rest of the train, which is air conditioned, but the door, rear door of the air conditioned train was locked, so that the passengers who were in this hot coach couldn't come into the other part of the train.

Q. That is the car that originated at——

A. That car originated at Sheffield, coming in on the Northern Alabama, which is part of the Southern Railway System, to Parish, and there it was switched onto this—that was strictly an intrastate coach,—which was switched onto the Southern Railway train that comes from Columbus to Birmingham, No. 16, and the passengers in that coach could not go into this air conditioned coach.

[fol. 1712] I did ask the flagman why they did that, why they kept that door locked, and he said to keep the passengers from running all over the train. And when I asked the conductor, he said they did that to keep the air condi-

tioned car from getting hot. I asked him if he had any instruction from the superintendent to do that, and he said he didn't need them. That is hearsay, however.

On June 17th I rode Southern Railway train from Birmingham to Maplesville, and made the inspection at Maplesville of train No. 19, at 2:25 p.m. That was the train going to Selma and Mobile. There was no one standing on that train. They had plenty of room.

On June 23rd I rode the Southern Railway train from Decatur to Huntsville, and made the inspection at Decatur, train No. 8, at 6:30 a. m. There was no one standing on that train.

This was also a Diesel train, with air conditioned equipment, and one coach that was not air conditioned attached to the end of the Diesel, which was hot.

On June 26th I rode from Decatur to Huntsville, and made the inspection at Decatur of Southern Railway train No. 46 at 12:30 a.m. There were 28 people standing on this train. This is a streamline train, and the seats, when a ticket is bought on that train, they are assigned to a certain seat, but on this train they had two coaches, ordinary coaches, to handle passengers who did not have assigned seats. I understand they carry that equipment for that purpose, be- [fol. 1713] cause lots of people want to ride, and they can't get seats, so they had these two coaches; but even then there were 28 people standing.

And on June 26th I rode from Huntsville to Decatur, and made the inspection at Decatur of train No. 45, Southern Railway, at 2:20 a.m., and there were 29 passengers standing. Now that is also a streamlined train, and the same condition applied to that one as it did to the other one. They had two coaches on there without reservations for passengers who didn't have reserved seats, and it was overcrowded.

On June 26th I rode Southern Railway train from Birmingham to Anniston, made the inspection at Birmingham, of tra[redacted]No. 40 at 8:45 a.m. No one was standing. The train was fairly crowded, but they had a few extra seats.

On June 26th I rode Southern Railway Train from Anniston to Birmingham, and made the inspection at Anniston of Train 47, at 12:47 p.m. This is a streamlined train, where the seats are reserved, and as I understand it they

carry only passengers that have reservations. That accounted for no one standing there.

I think that is all that I have.

Q. Did you make a similiar investigation of buses in the State of Alabama?

A. I did. Whenever I rode a bus I noted the conditions as to how many were standing, if any.

[fol. 1714] Q. Was all of the traveling that you did, was that all in the middle of the week?

A. No sir, it was every day in the week, they were all days in the week.

Q. How many Sundays did you inspect?

A. Two.

Q. Only two Sundays in the period that you made your investigation?

A. Yes sir.

Q. And there were Saturdays in there too?

A. Yes sir.

Q. In other words, you didn't pick any spots?

A. If I had had these in regular order—I separated them by companies—you would find that I had several trains on each day, every day of the week. I work all week.

Q. Was that in the ordinary discharge of your duties for the Commission?

A. Yes sir.

Q. Were you instructed as to the trains to make inspections of?

A. No sir.

Q. Or what railroads?

A. No sir.

Q. Were you told at what time?

A. I was told to make inspections.

[fol. 1715] Q. Were you told at what time to make an inspection?

A. No sir.

Q. In other words, it was left to your own discretion as to what inspections you would make?

A. Yes sir. I was told that if possible,—or to get, as well as week days, to get some trains on Sunday, which I would have done anyhow, to see how they compared.

Q. You only rode two streamlined trains and that was Decatur to Birmingham, is that right?

A. I rode——

Q. Or three.

A. Three; two streamliners between Decatur and Huntsville, and from Decatur to—back to Decatur from Huntsville; and then from Anniston to Birmingham.

Q. Was that on the Southern?

A. All three of them were on the Southern.

Q. You didn't make any trips on any of the air conditioned trains on any of the other lines?

A. No sir, I didn't have occasion to.

Q. What did you find on the buses?

A. Some buses are crowded, and sometimes they have to stand. Sometimes they are very crowded; and it is seldom that you find a bus that every seat is not taken on.

Q. That would apply generally all over Alabama, is that right?

[fol. 1716] A. Yes sir.

Q. Did you ride any trains between camps, I mean from points where camps are located in Alabama, to large centers, on Saturday?

A. No, I couldn't say whether I rode it on Saturday. I can look up the dates and see.

Q. Well, from your own memory.

A. No, I don't believe I rode on the Coast Line,—I don't believe that was Saturday. That passes the camp at Dothan. The camp there at Attalla, I rode that on Sunday, but there was no one standing on those trains at that time.

Q. Is that all you have?

A. Then there are a great many between Birmingham and Columbus, they ride the Central of Georgia, but they had plenty of coaches when I was on there.

Q. In other words, you didn't get into a military movement from camps to large centers in Alabama, within your recollection?

A. No, I didn't pick out any special trip. I just took them as I came to them, and as my work called for it.

Mr. Bruce: That is all I have.

Mr. Oliver: I have no questions on the record. I would like to ask one off the record.

(Discussion was had off the record.)

Examiner Stiles: Is there any cross examination?

[fol. 1717] Mr. Reynolds: I have no questions.

Examiner Stiles: You are excuesd.

(Witness excused.)

Mr. Bruce: I will call Mr. Tobias.

Examiner Stiles: We will take a brief recess.

(A short recess was taken.)

G. W. Tobias was sworn and testified as follows:

Direct examination.

By Mr. Bruce:

Q. Please state your name?

A. G. W. Tobias, T-o-b-i-a-s.

Q. What is your address?

A. 112 Terrace Avenue, Montgomery, Alabama.

Q. Mr. Tobias, who are you employed by?

A. By the State of Alabama.

Q. In what department?

A. Department of Finance, Division of the Examiner of Accounts.

Q. How long have you been employed by the State of Alabama, Mr. Tobias?

A. Oh, since 1927, with a brief interlude.

Q. Have you been in the same department all that time?

A. No sir.

Q. How long have you been in your present position? You are an examiner, are you not, of public accounts?

A. Yes sir.

[fol. 1718] Q. How long have you been an examiner of public accounts, Mr. Tobias?

A. About nine years.

Q. Explain your duties to the Examiner.

A. Well, the duties of an examiner of accounts, public accounts for the State consists of examining and auditing records and accounts of all state and county officials, boards, commissions and so forth.

Q. Do you travel continually?

A. Yes sir.

Q. In the discharge of your duties?
A. Yes sir.
Q. Are you permitted to travel first class?
A. No sir.
Q. You are forced to travel by coach fare, are you not?
A. Yes sir.
Q. What is your experience in regard to securing a seat in going from your home in Montgomery to the various cities that you have made inspections in, and returning to your home and to your office in Montgomery?
A. In the past twelve months I have had a series of audits in Mobile that has possibly consumed six of the twelve months. The remaining portion of the time has been spent in Southeast Alabama, Dothan and Clanton, Alabama, for the past twelve months.

[fol. 1719] Mr. Reynolds: Dothan and what?
The Witness: Dothan and Clanton. What was the question now?

By Mr. Bruce:

Q. Have you been able to find a seat in the past twelve months; or we will just ask you to state what the condition of the trains has been? Have they been generally crowded?
A. I will say that it would be a conservative estimate to state that I have stood practically fifty per cent of all the times in my travels in the past twelve months.
Q. Recently have you been able to find a seat at all on the trains that you rode from Mobile on?
A. I have not, not for the past three months that I have been in Mobile.
Q. What trains did you ride from Mobile, over what railroad did you ride?
A. The L. & N.
Q. Altogether the L. & N.?
A. Yes sir.
Q. When did you return home?
A. On week ends.
Q. That would be Friday and Saturday?
A. Well, it would be Friday, Friday night or Saturday morning.
Q. In other words, you didn't travel Saturday after-
[fol. 1720] noon,—or did you?
A. I have, yes sir.

Q. But do you do it as a general thing, as a matter of habit, or do you do it only occasionally?

A. No, our setup is this, that we have every other Saturday off, and we are allowed to come home Friday night every two weeks. The other week we work until Saturday noon, and if we choose to come home Saturday afternoon and return to our assignment by eight o'clock Monday morning we may do so in our own discretion. I have found traveling conditions were so crowded that for the last three months I have discontinued that Saturday trip.

Q. Have you attempted to find room on buses?

A. No sir, I haven't.

Q. You don't know anything about buses?

A. No sir.

Q. Has that condition generally prevailed in your department Mr. Tobias?

A. I understand it does. I have talked to quite a few of the examiners that have been working in North Alabama, and I understand that condition does exist. I can't state from any personal experience, because I have only been in—I haven't been in North Alabama at all, except north of Montgomery to Clanton, for a period of, oh, possibly six or eight weeks last fall.

Q. You came back from Mobile I think you told me a week [fol. 1721] ago last Friday, is that right?

A. Yes sir.

Q. What happended on the train that you came back on? Were you able to find room?

A. No.

Q. Did you stand all the way from Mobile to Montgomery on that occasion?

A. Yes sir.

Q. How far is that, over 200 miles?

A. I don't know by rail, but it is a little over 200 miles by highway; but I don't know just what the mileage is there by rail.

Q. And returning to Mobile, did the same condition prevail or not?

A. Yes sir.

Q. On Sunday night?

A. Yes sir, Sunday nights. I have ridden and stood, and talked with passengers who told me——

Mr. Reynolds: Now, we object to what the passengers told him.

By Mr. Bruce:

Q. You haven't been able to find any room yourself though?

A. No sir.

Q. For how many months? That is, from the present time back, for say many months would that apply?

[fol. 1722] A. For the past three months that I have been in Mobile.

Q. Have you found a seat at all in the past three months in returning home?

A. Yes sir, I have occasionally; but very seldom.

Q. Just very seldom?

A. Yes sir.

Q. That is all.

A. There has never been a trip when there weren't some people standing.

Q. In other words, if you had secured a seat there were other people standing on the train, just the same?

A. Yes sir.

Q. And that would be for the past three months?

A. Yes sir, approximately; I don't remember the exact dates now.

Q. Is the condition getting better or worse?

A. Well, I don't see very much change, if any it is worse. I will say this, my travels have been confined to week end travels, and that is heavier, I understand.

Q. But the week end would be Friday?

A. That is right.

Q. Ordinarily or Saturday morning?

A. Yes sir.

Q. You don't return home Saturday nights, do you?

A. No sir.

[fol. 1723] Q. Have you anything else to add, Mr. Tobias?

A. No sir.

Cross-examination.

By Mr. Reynolds:

Q. Do you travel outside of Alabama, Mr. Tobias?

A. No sir, I don't

Q. So you don't know what the conditions are in other places do you?

A. No sir, I don't.

Q. What did you mean when you said you were not permitted to ride except in coaches?

A. I mean by that the State only defrays that much expense.

Mr. Reynolds: I see. All right, thank you. That is all.

Examiner Stiles: You are excused.

The Witness: Thank you.

(Witness excused.)

Mr. Bruce: Mr. Examiner, it is approximately 4:30 and my other witnesses will consume at least an hour and a half, from an hour to an hour and a half apiece.

Mr. Oliver: How many are there?

Mr. Bruce: I have got three other witnesses and myself yet. I have got three witnesses left, and it will take approximately four or four and a half hours with these three wit- [fol. 1724] nesses.

Examiner Stiles: On direct?

Mr. Bruce: On direct. We have numerous exhibits, and I was wondering if you would permit us to adjourn, or if you would adjourn,——

Examiner Stiles: If there is that much——

Mr. Bruce: —until tomorrow morning say at nine o'clock Mr. Examiner.

Examiner Stiles: If there is going to be that much on direct, it seems to me that we had better run some more tonight in order to be sure of getting through tomorrow, Mr. Bruce.

Mr. Bruce: We have only approximately a half hour left tonight.

Mr. Reynolds: Off the record.

Examiner Stiles: Suspend the record.

(Discussion was had off the record.)

J. G. Bruce was sworn and testified as follows:

Direct examination.

The Witness: My name is J. G. Bruce. By business address is the offices of the Public Service Commission, at Montgomery, Alabama.

I am employed by the Alabama Public Service Commission as chief of the Transportation Bureau.

[fol. 1725] I have charge of matters pertaining to transportation for the Alabama Public Service Commission, and I have direction over the activities of that Bureau. I have supervision over the employees, and over the inspectors. I have charge of the records of the Commission. I supervise the tariffs on file, all changes of rates, whether under statutory provision or under less than statutory provision or authority, that comes through my office.

I have charge of all of the records of the Commission, the annual reports of carriers, and in fact we construct most of the orders of the Commission in my department, subject to the approval of the Commission.

And in the past ten months my office has issued more than 350 motor carrier orders, which granted, through these motor carriers, their operating rights within the State of Alabama.

Of these orders only two are before the Commission for rehearing, and none are in the courts.

My experience in traffic began in 1910. In 1910 I was employed by the Butte & Superior Mining Company, of Butte, Montana, as a traffic clerk. Later on I became the surface foreman of this mining employer, this mining company, employing more than a thousand men, and I had charge of everything on the surface in this mining operation, including the handling of thousands of carloads of ore, concentrates, and various mining materials per month. I held [fol. 1726] that position until the year 1918.

In 1918 I enlisted in the army, and was in the army until the termination of the war. I enlisted as a private, and was the truckmaster of the Second Division after my arrival in France, and was discharged as a first lieutenant of engineers after the war.

Due to injuries received in service in France I did not return to my former employment, but became connected with the Chicago, Milwaukee & St. Paul & Pacific Railroad on June 1, 1920, as a rate clerk. I continued in the employment of the Milwaukee until September 1, 1930.

Upon the termination of my services with the Milwaukee, I was traveling freight and passenger agent with a part of the states of North Dakota and South Dakota, and Montana in my territory, and was assistant to the general livestock agent.

During my employment with the Milwaukee I appeared as a witness before the Interstate Commerce Commission

in matters pertaining to live stock, grain and other farm products, and I appeared before various state commissions as a witness in cases which the Milwaukee Railroad had an interest in.

On September 1, 1930 I resigned and became president of the Montana Trucking Lines, which line I operated until 1934, January 1, 1934. On January 1, 1934 I sold my holdings in that line, and became traffic expert for the Montana Railroad Commission, which position I held until May [fol. 1727] 1, 1937, when I became connected with the Idaho Utilities Commission, as chief of transportation.

I held that position until I resigned to accept my present position on August 1, 1942.

I have been licensed to practice before the Commission since 1934. I am also licensed to practice before the United States Maritime Commission, the Federal Aeronautics Commission, the State Department, United States State Department, the Federal Power Commission, and the Federal Communications Commission.

When this case came before the Commission——

Examiner Stiles: Before the Alabama Commission, you mean?

The Witness: Before the Alabama Commission, yes sir, the instant case I am speaking about at the present time; I was ordered by the Commission to make an investigation of the matters involved, and the tariffs which were filed with the Commission to become effective on December 1, 1942.

At that time the Commission had before it a petition which was filed by the Office of Price Administration, requesting the suspension of the proposed increase. Due to the fact that the petition which was before the Commission was in substance a petition before the Interstate Commerce Commission also, the Alabama Commission decided to suspend the tariffs on its own motion.

[fol. 1728] As stated before, the tariffs involved were to become effective December 1, 1942, and said tariffs named an increase in coach fares, applied in Alabama, of 33⅓ per cent over the basic rate of 1.5 cents per mile, then in effect in Alabama.

When the Ex Parte 148 case, the original case, Mr. Examiner, was decided, the Alabama Commission was petitioned to grant their authority to publish the same increases as granted by the Interstate Commerce Commission on

passenger fares and charges. And the Commission did grant an increase of ten per cent, which made the rates at the time of the suspension in this instant case before the Alabama Commission 1.65 cents per mile.

I am not naming the other rates that are proposed to be increased, due to the fact that they are based practically altogether upon the basic rate which is in effect generally for coach fares. We are not very much interested in the first class rate increases, through the fact that they were small, although they were also suspended.

The petition which was filed by the Office of Price Administration was attached to a letter, signed by Robert A. Nixon, Director Transportation and Public Utilities Division, Office of Price Administration, and under date of September 24, 1942. The petition requested the Alabama Commission to suspend the proposed increase.

[fol. 1729] On November 5, 1942, the Commission entered its order suspending the tariffs naming the increases, and ordered an investigation to determine whether or not the Commission would permit the tariffs to become effective.

Said investigation was held on November 24, 1942, in Montgomery, Alabama.

Mr. Oliver: Now might I just ask one question for clarification of the record? You said this petition of Mr. Nixon or rather of the Price Administration was filed on September 24, 1942.

The Witness: Yes sir.

Mr. Oliver: Was that the date?

The Witness: Yes sir.

Mr. Oliver: That was before the tariffs were filed.

The Witness: That was before the tariffs—before the Alabama Commission.

Mr. Oliver: I see.

The Witness: And that is the reason I explained the Commission acted on its own motion.

Mr. Oliver: I see.

The Witness: At the hearing held on November 24, 1942 before the Alabama Commission, I sat on the bench with the Commission and aided the Commission in developing the record.

After the record had been received from our official reporter, I was instructed by the Commission to make a study [fol. 1730] of the record, with a view to making certain recommendations to the Commission.

I have in my hand at this time a copy of the record which we secured from the Official Reporter of the Commission, who is also the official reporter of our Commission, and which I at this time request the Commisison, Mr. Examiner, to accept as an exhibit.

Mr. Oliver: Of course you will furnish copies of it, Mr. Bruce?

The Witness: I don't think that we should be required to furnish a copy of the record to the carriers. I want to state at this time this is the first time in my experience as a practitioner and as a witness before the Commission in several hundred cases, not all of them Section 13 investigations, but at least 20 section 13 investigations, in which the carriers have not submitted as Exhibit No. 1 the record that was made before the State Commission.

Mr. Oliver: Now, Mr. Examiner, that deficiency has been supplied, and my remark was really facetious. I waive a copy of the record.

The Witness: You do? I thank you.

Examiner Stiles: Let this be marked as Exhibit No. 18 and received in evidence.

(Exhibit 18, Witness Bruce, was marked for identification, and received in evidence.)

[fol. 1731] The Witness: I at this time wish to offer Exhibits 1, 2, 3, 4, 5 and 6, which were offered by the carriers in A. P. S. C. Docket No. 8618, as exhibits in that case, Mr. Examiner, as my exhibits in this case.

Examiner Stiles: Let's identify them off the record. What is Exhibit 19?

The Witness: Numbers 1 to——

Examiner Stiles: Let's identify them for the record. On the record. What is Exhibit 19?

The Witness: Exhibit No. 1 in that case is a copy of the order of the Commission in Ex Parte 148, Increased Rates, Fares and Charges, 1942.

Examiner Stiles: That will be Exhibit 19.

(Exhibit 19, Witness Bruce, marked for identification.)

The Witness: Exhibit No. 2 in that proceeding is a reply of the respondents to the petition of Mr. Leon Henderson, Price Administrator of the United States, seeking

suspension of increases in certain passenger fare schedules filed to become effective October 1, 1940.

Examiner Stiles: That will be Exhibit 20.

(Exhibit 20, Witness Bruce, marked for identification.)

The Witness: Exhibit No. 3 in that proceeding is an exhibit which was headed, or which on the cover page states "In the Matter of proposed increases in passenger fares," [fol. 1732] and was introduced by witness Beight.

Examiner Stiles: That will be Exhibit 21.

(Exhibit 21, Witness Bruce, was marked for identification.)

The Witness: Exhibit 4 in that proceeding is an exhibit introduced by Witness Beight, stating "Southern Railway Company, Eight months ending August 21, 1941 and 1942, respectively."

Examiner Stiles: That will be Exhibit 22.

(Exhibit 22, Witness Bruce, was marked for identification.)

The Witness: Exhibit 5 in that proceeding, introduced by Witness Beight, states "Southern Railway Company, eight months ending August 31, 1942," and line 1 states Railway Operating Revenue.

Examiner Stiles: That will be Exhibit 23.

(Exhibit 23, Witness Bruce, was marked for identification.)

Examiner Stiles: You are reading from the first page of each one.

The Witness: The first page, of the caption, yes sir. Exhibit No. 6 in that proceeding is captioned "Southern Railway Company passenger revenue, years 1937 to 1941, inclusive." It can be identified by the first line stating "1937, coach, $4,990,517."

Examiner Stiles: That will be Exhibit 24.

[fol. 1733] (Exhibit 24, Witness Bruce, was marked for identification.)

The Witness: Now, I have other exhibits.

Examiner Stiles: Off the record.

(Discussion was had off the record.)

The Witness: Exhibit No. 7 in that proceeding, consisting of nine pages, was submitted by the Office of Price Administration, and by a witness whose name I don't remember, because his name is not on here, but the record will show what his name is. As a matter of fact, I will refer to the record.

Examiner Stiles: That is a set of graphs, isn't it, Mr. Bruce?

The Witness: That is Exhibit No. 7 in that proceeding, yes.

Examiner Stiles: That will be Exhibit 25.

(Exhibit 25, Witness Bruce, was marked for identification.)

Mr. Oliver: I think Early was the witness.

The Witness: Witness Early, who appeared for the Office of Price Administration, introduced Exhibit No. 25.

Examiner Stiles: No. 7 in that case.

The Witness: Yes sir.

Examiner Stiles: Do you tender those at this time?

The Witness: I tender these exhibits for the record, Mr. Examiner, with your authority.

[fol. 1734] Examiner Stiles: Exhibits 19 to 25, inclusive, are received in evidence.

(Exhibits 19 to 25, inclusive, Witness Bruce, were received in evidence.)

The Witness: Due to the fact that I do not desire to go into my voluminous testimony at this time, I will introduce an exhibit which is a statement of three pages, reproducing excerpts from decisions of the United States Supreme Court, and the Interstate Commerce Commission in cases decided by the Commission, pursuant to the provisions in Section 13, Paragraph 4 of the Interstate Commerce Act as amended.

Examiner Stiles: That will be identified as Exhibit No. 26.

(Exhibit 26, Witness Bruce, was marked for identification.)

The Witness: The cover page explains the contents of the exhibit. Page 1, in the first statement quoting the United States Supreme Court——

Mr. Reynolds: Mr. Examiner, I submit the exhibit speaks for itself.

The Witness: I wish to make some explanation. I will be very brief, Mr. Examiner.

Examiner Stiles: All right, Mr. Bruce.

The Witness: I have built my case, the evidence which I will present here, largely on the decisions which the Commission has made in similar cases, and which were affirmed [fol. 1735] by the United States Supreme Court.

Examiner Stiles: You may proceed.

The Witness: The first statement is statement quoting the United States Supreme Court, in Georgia Public Service Commission v. United States, 283 U. S. 765-74; and Florida vs. United States, 282 U. S. 194; Georgia Public Service Commission v. U. S.

The Commission reproduced those excerpts, Mr. Examiner, in 214 I. C. C. 577-584, and in 283 it is reproduced—I mean the reference is 283 U. S. 765 and 774. "When state rates are assailed on the ground that they result in undue prejudice to interstate shippers, or discrimination against interstate commerce, the Commission must determine whether the existing interstate rates are reasonable; as it will not require the intrastate rates to be raised above a reasonable level."

Carriers have made no effort whatsoever to——

Mr. Oliver: I object to the argument, Mr. Examiner.

The Witness: All right, I will leave it out.

Mr. Oliver: Let's put it in briefs.

The Witness: The second statement is a statement quoting the United States Supreme Court in Smythe v. Ames, 169 U. S. 466. "If the action of the Commission is not simply for the removal of undue prejudice against interstate commerce as between persons or localities, and the Commission undertakes to prescribe a statewide level of [fol. 1736] intrastate rates in order to avoid an undue burden from a revenue standpoint upon the interstate carrier, there should be appropriate findings upon evidence to support an order directed to that end." And the reference on that is 169 U. S. 466-547, and 214 I. C. C. 577, 584.

The second statement——

Examiner Stiles: Mr. Bruce, if the exhibit is going to be received in evidence it will be a part of the record, and it is not necessary to read it in again.

The Witness: Then I will make reference in my testimony as I go along to these various decisions which were

made by the Commission, and which were affirmed or confirmed by the Supreme Court.

Examiner Stiles: That is just as much a part of the record if we make it an exhibit as it is if you read it into the testimony.

The Witness: With that statement from you, Mr. Examiner, I will forego further explanation, with the exception of the top quotation on page 3. I am going to make direct reference to this one there, I mean to this statement, Mr. Examiner, due to the fact it is a reproduction from the Wisconsin case in which the court found that the rates within the state, that were not at border points, that there was a grave question as to whether the Commission could regulate these intrastate rates. You see, in other words, for authority over here, intrastate rates, due to the fact that they might not in any way be involved in prejudice [fol. 1737] against interstate commerce; in other words, it brings out the fact that these carriers have not shown any exhibits, or have not shown by any exhibits where interstate commerce could be defeated.

Mr. Reynolds: That is argumentative, and I object to it, Mr. Examiner.

Examiner Stiles: It is more a matter for your brief, Mr. Bruce. You can argue that question fully in your brief if you wish. Do you want to suspend here?

The Witness: Mr. Examiner, I have submitted the record as an exhibit, but I think it is proper for me to explain as the traffic chief of the Alabama Commission what the Alabama Commission relied upon in that record to make up its decision on.

Mr. Oliver: I object to that. I submit that the record itself, and the Commission's order, is all that this Interstate Commerce Commission can consider as evidence in this case. Now what Mr. Bruce had in mind, or what the Alabama Commission had in mind, that is not set out in the order, is entirely irrelevant.

Examiner Stiles: The Commission has been furnished with the record and with the order of the Commission. If you were going to say what it appeared from your introductory remarks that you were going to say, then this objection is well taken I think.

[fol. 1738] The Witness: That will force the submittal of a very complicated brief of many pages, Mr. Examiner, which might easily be saved with an explanation of the

Alabama record in this record at the present time, because we will be forced to go into the record and point out what this Commission, that is the Alabama Commission, used as evidence to issue or base their order on.

Examiner Stiles: Did they issue a report with the order or not?

Mr. Bruce: Yes sir, but the report is very very brief, due to the fact the carriers there requested the Commission to make its order as soon as possible.

And there is another condition that comes about in Alabama. The suspension period of a tariff, statutory period of suspension of a tariff is sixty days in Alabama. The Commission can't go beyond that sixty days in the issuance of its order or the tariff becomes effective without the authority of the Commission,—without the authority of the carriers. If the carriers would grant authority for an additional thirty days' suspension of their tariff, the Commission can go beyond the sixty days, which means that due to the fact that we depended on an official reporter, with a delay of a week or ten days before the record is received, sometims longer, due to the fact that the same reporter was hearing cases continually for the Commission under the Grandfather Clause of the Motor Carrier Act, [fol. 1739] which leaves very little time for the Commission to make an investigation and study the exhibits and the record, therefore the report in this case is not as explanatory as it could be.

Examiner Stiles: I don't think that you as an employee of the Alabama Commission could testify to what the commission members had in their mind in the decision of the case. If the report doesn't speak for itself, it appeals to me reasonable that the Commissioners themselves would have to say what influenced their minds.

The Witness: Mr. Examiner, in our particular method of preparing reports in Alabama, practically all of the reports are prepared by myself in matters pertaining to freight——

Examiner Stiles: But they are not decided by you, they are decided by the Commission.

The Witness: They are decided by the Commission, but after a discussion or upon recommendation.

Examiner Stiles: Yes.

The Witness (Continuing): From my office.

Examiner Stiles: If the carriers insist on that objection, it certainly is well taken.

Mr. Reynolds: We do insist.

Mr. Oliver: We do insist, certainly.

The Witness: Then the Examiner's ruling is that I cannot testify on the——

[fol. 1740-1743] Examiner Stiles: As to what influenced the Commission, the Alabama Public Service Commission, in reaching its decision. Their report speaks for itself, or they may speak for themselves.

The Witness: It is now five o'clock, so I will ask for an adjournment until tomorrow morning.

Examiner Stiles: Very well.

The Witness: May I offer Exhibit No. 26 in the record, Mr. Examiner?

Examiner Stiles: Exhibit No. 26 is received in evidence.

(Exhibit No. 26, Witness Bruce, was received in evidence.)

Examiner Stiles: We will adjourn until 9:30 tomorrow morning.

(Whereupon, at 5 o'clock p. m. on Tuesday, June 29th, 1943, the hearing was adjourned until 9:30 o'clock on Wednesday, June 30th, 1943.)

[fol. 1744] Offices of Alabama Public Service Commission,
Montgomery, Alabama

Wednesday, June 30th, 1943.

Met, pursuant to adjournment, at 9:30 o'clock a.m.

Before Examiner C. E. Stiles

Appearances: As heretofore noted.

Proceedings

Examiner Stiles: Let's come to order, please.

Mr. Bruce: Mr. Examiner, may I leave the stand and put another witness on, with the understanding I have further testimony to offer?

Examiner Stiles: Yes sir.

Mr. Bruce: I will call Mr. Norwood Johnson as my next witness.

NORWOOD JOHNSON was sworn and testified as follows:

Direct examination.

By Mr. Bruce:

Q. State your name in full, Mr. Johnson.
A. Norwood Johnson.
Q. You live in Montgomery?
A. Yes sir.
Q. Whom are you employed by?
A. The Alabama Public Service Commission.
Q. Do you have access to the Commission's records?
A. Yes sir.
[fol. 1745] Q. Are the annual reports filed by all carriers filed in your office?
A. All carriers operating in Alabama, yes sir.
Examiner Stiles: In what capacity are you employed by the Commission?
The Witness: My title is rate clerk in the Transportation Bureau.

By Mr. Bruce:

Q. How long have you been employed by the Alabama Public Service Commission?
A. A little over four and a half years.
Q. State your experience in transportation prior to that time?
A. I was employed for approximately four and a half years in the General Freight Office of the Louisville & Nashville Railroad, at Montgomery, and for over, a little over eleven years in the transportation bureau of the Chamber of Commerce in Montgomery.
Q. During all that time you were in transportation?
A. In transportation work, yes sir.
Q. What are your duties at the present time with the Alabama Public Service Commission?
A. Well, do you mean to be rather specific?
Q. Your general duties?
A. Well, handling special permissions for short notices, claims for reparation on informal docket, checking all [fol. 1746] freight bills for the State of Alabama.
Q. That is for all departments of the State of Alabama, you mean?

A. Yes sir, all departments.

Q. Is that all?

A. I think that would be sufficient for this purpose.

Q. Were you instructed to prepare a number of exhibits, Mr. Johnson?

A. Yes sir.

Q. To submit in this proceeding?

A. Yes sir.

Q. And have you done so?

A. Yes sir.

Q. What was the source of your information in the preparation of these exhibits?

A. In a majority of the exhibits it was information taken from the annual reports of the petitioners on file with the Alabama Public Service Commission.

Q. By petitioners, you mean the petitioners involved in this proceeding?

A. That is right, yes sir.

Mr. Bruce: May we number the exhibits at the present time Mr. Examiner?

Examiner Stiles: Yes. 27 will be the first one.

(Exhibit 27, Witness Johnson, was marked for identification.)

[fol. 1747] By Mr. Bruce:

Q. Proceed and explain your Exhibit No. 27, please.

A. This exhibit is a statement showing the total railway operating revenues earned in Alabama by all petitioners in this proceeding for the years of 1939 up to and including the year 1942.

Examiner Stiles: That is Exhibit 27.

The Witness: Yes sir.

By Mr. Bruce:

Q. Please proceed.

A. For each year it is divided into three columns. Column A is explained in the references. That should be a capital "A" in the reference, Capital A, B, and C. Column A for each year is the total actual intrastate revenue. Column B is the total of interstate revenues assigned to Alabama intrastate traffic.

Q. Is that the portion of the miles in Alabama that an interstate movement occurs over?

A. Yes, I think it is generally assigned on that basis.

Examiner Stiles: A mileage basis?

The Witness: Yes sir, on a mileage basis, of the actual movement within the State of Alabama, of the traffic.

Mr. Bruce: It is assigned under the Commission's rules, Mr. Examiner, the interstate movement of commodities and passengers, the actual miles in movement. The Commission issued a rule to the carriers that they split the [fol. 1748] interstate destination of shipments destined to the state and originating in the state for the number of miles that the shipment travels within the state.

Examiner Stiles: How about those passing through the state; you have that in item 3, too?

Mr. Bruce: That will be the same way, yes sir. We will show you how it is assigned in the report. And these reports are purchased from the Commission and sent to the carriers for filling out and filing with the Commission.

The Witness: For the L. & N. Railroad, for instance, they show revenue——

Mr. Bruce: Here is the balance sheet here, and here is the item we are talking about now (indicating).

Examiner Stiles: All right.

Mr. Bruce: If you notice, the report is divided into state statistics.

By Mr. Bruce:

Q. What is Column C?

A. Column C is a total of the railway operating revenue earned within Alabama.

Q. That includes Columns A and B?

A. Yes, that is the total of Columns A and B. You will notice that some of the columns A and B are blank, or rather they have a reference mark. That is because the carriers did not segregate the intrastate traffic as to the actual intrastate revenue and that assigned to intrastate revenue.

[fol. 1749] Q. The first year is 1939?

A. Yes sir; and of course the same basis of the same apportionment in totals carry through into 1942.

Q. In the last column, after 1942, you show figures in revenue, increase 1942 over 1939?

A. Yes sir, that is the increase.

Q. Will you state what that is for each carrier, and the percentage?

A. You mean the increase for each carrier, and the percentage?

Q. Yes sir.

A. Well, for the Alabama Great Southern the increase in revenue for 1942 over 1939 was $10,185,485, an increase of 157.1 per cent.

Mr. Oliver: Mr. Examiner, do you think it is necessary to read that into the record?

Examiner Stiles: The illustration you have given is sufficiently descriptive of the entire column, I think.

Mr. Bruce: The total increase, just so long as he has explained it for one carrier, I am going to ask him to state what the total increase is in 1942 over 1939, in dollars and cents, for all carriers.

A. $71,153,930.

By Mr. Bruce:

Q. What is the percentage?

A. That is the percentage,—not an average of the per-
[fol. 1750] centages for each individual carrier, but the percentage of the totals for 1939, as compared with 1942.

Q. The percentage of the totals for 1939 as compared with 1942, is that that 141 you show?

A. 141.7 per cent.

Mr. Reynolds: As a matter of arithmetic, it is 41 per cent, instead of 141 per cent, isn't it? In other words, seventy-one million is 40 per cent greater than fifty million, not 141 per cent.

Mr. Bruce: The increase he is talking about, 1939, at the present time, the increase represents the difference between $50,197,403 in 1931, and $121,351,000.

Mr. Reynolds: Excuse me. I looked at the wrong column of figures.

Mr. Bruce: Are you straightened out now?

Mr. Reynolds: Yes.

By Mr. Bruce:

Q. That explains the first sheet?

A. Yes sir, that is right.

Q. Explain the next exhibit, No. 28.

(Exhibit No. 28, witness Johnson was marked for identification.)

A. This exhibit is a statement showing the passenger operating revenues, and revenues from mail, express and milk, earned in Alabama by petitioners in this proceeding for the years 1939 up to and including 1942. This one is [fol. 1751] also separated as the previous exhibit was.

Column A shows of course the revenues earned within Alabama, actual revenue, and Column B, being that apportioned to Alabama; and Column C is the total.

Q. That is for the years 1939, 1940, 1941 and 1942?

A. Yes sir, that is correct. This shows only—take for instance, under Alabama Great Southern, it shows only the passenger revenue, the revenue derived from mail, the revenue derived from express, and the revenue derived from milk, which is handled in passenger service.

Q. What is the total revenue in 1939 for all petitioners in Alabama?

A. 1939?

Q. Yes, 1939.

A. $6,096,930.

Q. What is the total passenger revenue for 1942, your Column C?

A. $21,643,872.

Q. And that represents an increase in dollars of how much for all carriers?

A. A total increase of $15,546,942.

Q. And what percentage does that represent?

A. 255 per cent increase in 1942 over 1939.

Q. That is passenger and allied services?

A. Yes sir.

[fol. 1752] Q. Explain your Exhibit No. 29.

(Exhibit No. 29, Witness Johnson, was marked for identification.)

A. This exhibit is a statement showing the total railway passenger operating revenues earned by petitioners in this proceeding within the State of Alabama on intra-

state and interstate traffic for the years 1939 to and including 1942.

This exhibit shows as I stated the passenger operating revenues as shown in the reports for the petitioners on file with the Commission. And it is largely for the purpose of showing the progression of 1940 over 1939, and 1941 over 1940 and 1942 over 1941.

Q. Take the Alabama Great Southern and explain that.

A. In 1939 their passenger operating revenues were $481,375. In 1940 they were $548,838. In 1941 it increased to $1,078,090 and in 1942 it increased to $2,552,609, showing a percentage increase for 1940 over 1939 of 14 per cent, 1941 over 1940 of 96.4 per cent, 1942 over 1941, 136.80 per cent.

The total for all carriers for 1939 is $3,095,858, in 1940 $4,308,987, 1941 $6,618,191, 1942 $18,520,330. The percentage increase in 1940 over 1939 was 10.3 per cent.

Q. That is for all carriers?

A. For the total revenues of all carriers.

Q. All right.

A. The percentage of increase in 1941 over 1940 was 53.6 per cent, 1942 over 1941 it was 179.8 per cent increase. In [fol. 1753] other words, this differs from previous exhibits in that we have shown the separate years, as I stated; whereas, the others show the increase 1942 over 1939.

Q. What is your authority?

A. The annual reports of the petitioners, on file with the Alabama Commission.

Q. Explain your Exhibit No. 30.

(Exhibit No. 30, Witness Johnson, was marked for identification.)

A. This shows the operating freight revenues earned by petitioners in this proceeding within the State of Alabama on interstate and intrastate traffic for the years 1939 to and including 1941.

Q. Does that include actual revenue?

A. Actual intrastate revenue, and that portion of interstate revenue assigned to Alabama intrastate.

Q. The figures represent the total of the two?

A. That is right, yes sir.

Mr. Burkett: Mr. Johnson, shouldn't that be 1942, that heading of the exhibit?

Mr. Bruce: Yes, that should be.
The Witness: That is correct, yes sir.

By Mr. Bruce:

Q. The last year, "including 1941" should be 1942, in the caption.

A. Yes, in the caption.

[fol. 1754] Q. Explain for the Alabama Great Southern and give me the totals.

A. For the Alabama Great Southern, their operating freight revenues for the year 1939 were $5,620,487, for 1940 they were $5,998,517, for 1941 $7,802,710, and for 1942 $13,415,035. The percentage of increase in 1940 over 1939 was 6.7, in 1941 over 1940 30% increase, percentage of increase 1942 over 1941 71.9 per cent.

Q. Give me the totals?

A. 1939, $42,877,828.

Q. That is for all carriers?

A. All carriers involved in this proceeding. For 1940 it was $48,386,672, for 1941 $67,032,346, and for 1942 it was $96,837,092. An increase in percentage, 1940 over 1939, 12.8; 1941 over 1940, 38.5; 1942 over 1941, 44.5.

Q. And you have some explanatory references there. Do you want any explanation of that, Mr. Counsel?

A. I think I might explain it very simply. It is just when the G. M. & N. and the M. & O. consolidated into the G. M. & O., and of course we had to show them separately.

Q. Explain Exhibit No. 31.

(Exhibit No. 31, Witness Johnson, was marked for identification.)

A. This exhibit is a statement showing the one way present rail coach fares and bus fares, and proposed rail coach fares between Montgomery and Birmingham, Alabama, and various points in Alabama, and does not include [fol. 1755] the Federal transportation tax.

Q. Go ahead.

A. We will take from Birmingham, or between Birmingham and Demopolis. The rail distance is 155 miles. That is the rail fare making distance, producing a fare at present of $2.60, and the highway distance is 139 miles, with a fare of $2.05. The proposed rail coach fare is $3.41, or an

increase in proposed rail coach fare over the present bus fare of $1.36.

Q. Did you use Birmingham due to the fact that Birmingham is one of the principal points in the State of Alabama in making your illustration?

A. Yes sir, there is quite a bit of traffic undoubtedly moving in and out.

Q. These points that you show fares to and from, to Birmingham and from Birmingham, that is between Birmingham and these points, are they representative points in Northern Alabama, Mr. Johnson?

A. Yes sir, I think you could term them as representative points in various directions.

Q. They were not selected for some particular purpose, I take it?

A. Oh no, just selected from the map.

Q. What is the second section?

A. Those are the same kind of comparisons between [fol. 1756] Montgomery, Alabama and various points in Alabama. For instance, between Montgomery, Alabama, and Dothan, the rail coach fare based on a distance of 120 miles produces a rate of $2.00. The highway distance is 113 miles, and the fare by bus is $1.90. The proposed rail coach fare is $2.64, and the increase in the proposed rail coach fare over present bus fare would be a difference of 74 cents.

On page two of that exhibit the authorities for the rates are shown.

Q. Explain your Exhibit No. 32.

(Exhibit No. 32, Witness Johnson, was marked for identification.)

A. This is a statement showing scheduled and restricted stops of various first class passenger trains for that portion operated through Alabama. You take the seven first class trains, Pan American and the Azalean, operating entirely over the Louisville & Nashville Railroad, the Crescent and Piedmont, operating jointly over the Western Railway of Alabama and the Louisville & Nashville, the Southerner and the Tennesseean, operating exclusively over the Southern Railway System—of course these are within Alabama,—and the South Wind, operating jointly over the facilities of the Louisville & Nashville and the Atlantic Coast Line Railroad.

Q. And that shows the stops as shown in the Official Guide of the railroads, published by the Railway Publication Company, does it?

[fol. 1757] A. That is right.

Q. These are all of the stops that you were able to find in the time tables as published in the Guide, Mr. Johnston, are they?

A. That is right.

Q. Passengers living at intermediate points in Alabama——

A. I have shown all of the restrictions, or rather the stops where stops will be made, where there are some stated restrictions as to the passengers they take on or let off, as to the destination or origins, and some are flag stops.

Q. Have you shown the flag stops on this exhibit?

A. Yes sir.

Q. And the exhibit shows the actual stops and the flag stops, is that right?

A. I really don't think there is but one flag stop.

Q. That includes all classes of stops?

A. Oh, yes sir.

Q. For instance, on the Pan American, you have seven stops; is that right?

A. Yes sir.

Q. And passengers living at intermediate points would not have access to that train?

A. No sir.

Q. And the same would apply to the Azalean?

A. The same is true of the Azalean, yes sir.

[fol. 1758] Q. Now the Southerner stops at four points in Alabama, does it not?

A. It has three regular stops, and one other.

Q. One flag stop?

A. It is not a flag, it stops westbound on signal to receive or discharge revenue passengers,—it is a flag stop, I beg your pardon, only on westbound traffic.

Q. The Tennessean has six stops?

A. Yes sir.

Q. And the Louisville & Nashville South Wind has four stops has it?

A. Yes sir.

Q. Tell the Examiner where the South Wind comes into Alabama, and where it goes *it* out of Alabama?

A. Southbound it enters over the tracks of the L. & N. Railroad at the Tennessee-Alabama state line, north of Athens, Alabama. It then runs over the tracks of the L. & N. to Montgomery, where it is turned over to the Coast Line, and moves over its tracks to the Alabama-Georgia state line, just beyond Dothan, Alabama.

Q. It crosses the state then practically altogether north and south?

A. Yes sir, practically; and then turns in a southeast direction after leaving Montgomery.

Q. Page two is your references?

[fol. 1759] A. Yes sir, that is correct.

Q. Have you another exhibit?

A. Yes sir.

Mr. Bruce: May this be identified as Exhibit No. 33, Mr. Examiner?

Examiner Stiles: Yes, the reporter will so identify it, as Exhibit No. 33.

(Exhibit No. 33, Witness Johnson, was marked for identification.)

By Mr. Bruce:

Q. Explain that exhibit, Mr. Johnson.

A. Page 1 is a cover page. This exhibit is a statement showing Alabama operating revenues and expenses, related to passenger and allied services, as reported in annual reports of petitioners for the years 1941 and 1942. It includes operating revenues and expenses on Alabama intrastate passenger traffic, actual and assigned.

Q. And the authority is quoted there?

A. As I stated, yes sir, the annual reports filed with the Commission.

Examiner Stiles: Let's see if I understand that. Do they take the total expense for the system, and divide that as between interstate—I mean as between Alabama traffic and that outside of Alabama, or on what basis do they divide it?

The Witness: It is on the same basis as that used in [fol. 1760] arriving at an assignment of the freight revenue. It is a little bit difficult to answer that exactly, Mr. Examiner, because some of them fail to show how they arrive at it.

Examiner Stiles: Is it on car miles or passenger miles, or what?

The Witness: Passenger miles, on passengers.

Examiner Stiles: And freight miles on freight?

The Witness: Generally.

Examiner Stiles: Passenger miles on passengers?

The Witness: As operated within the state. That is what some of them do show. It is somewhat similar to arriving at the basis for dividing the freight revenue.

Mr. Bruce: I wonder if you wouldn't like to look at the annual report? Here are the allied services here, Mr. Examiner (indicating).

Examiner Stiles: Suspend the record.

(Discussion was had off the record.)

Mr. Tassin: With respect to the Alabama Great Southern and the Southern Railway, their direct expenses are actual, as between the states. Indirect expenses are apportioned over the states on appropriate bases derived from the basic statistics.

Mr. Bruce: Is the formula which you use in arriving at such expenses, apportionment of such expenses, is that supplied by the Commission?

[fol. 1761] Mr. Tassin: No. We take the actual figures that can be actually or directly assigned, and those figures that cannot be directly assigned and must be apportioned, there are several bases of apportionment, and we use the most appropriate in apportioning the general expenses over the several states we operate in.

Examiner Stiles: In other words, on some items would that be on a ton mile basis, and on others would it be a car mile basis?

Mr. Tassin: A car mile basis.

Examiner Stiles: And on others a locomotive mile basis would be used?

Mr. Tassin: On others it might be the accumulation of actual, relationship of actual, state ' state. We devise the one that is most appropriate to the group of general expenses that is to be apportioned.

Mr. Oliver: In order that there may be no confusion, I would like to ask Mr. Tassin just one question, and that is this: When you are speaking about apportionment of expenses to Alabama——

Mr. Tassin: Yes.

Mr. Oliver: —you apply those expenses to the handling of both interstate and intrastate commerce in Alabama, do you not?

Mr. Tassin: Oh yes.

[fol. 1762] Mr. Oliver: You don't undertake to separate as between the expenses of handling intrastate commerce in Alabama, and the expense of handling interstate?

Mr. Tassin; No. As I stated yesterday on the stand, intrastate and interstate are handled together, in the same trains, and over the same roads, so we make no breakdown of costs as between interstate and intrastate, but merely as between state lines.

The Witness: You use the same basis of freight revenue and expense as for passenger revenue?

Mr. Tassin: Yes sir.

Mr. Bruce: Counsel, you don't dispute the figures in your own report, do you?

Mr. Oliver: Oh, absolutely not.

By Mr. Bruce:

Q. Explain your first page of your Exhibit No. 33, Mr. Johnson, and state to the Examiner how you arrive at the figures that you have for 1941 and 1942 on the Alabama Great Southern Railroad.

A. This statement first shows the revenue for the years 1941 and 1942, derived from the following classes of railway operating revenue: Passengers, baggage, mail, express, other passenger train, milk, dining and buffet, parcel room,—it should be parcel room and storage for baggage.

Examiner Stiles: Let's suspend the record.

(Discussion was had off the record).

[fol. 1763] Q. Now, give the total of the passenger revenue and allied services?

A. For 1941, the total for account of the Alabama Great Southern was $1,505,762.

Q. All right.

A. In 1942 it was $3,156,247. Now the expenses are those as shown by the petitioner in its *annual* reports.

Q. State what page number.

A. The totals are shown on page 707 of each report for the years 1941 and 1942. They reflect the expenses related solely to passenger and allied services.

Q. As shown by the carriers?

A. As shown by the carriers, which include numerous items.

Q. State a few of those items?

A. The captions would be first, maintenance of way and structure.

Q. And what is the page number where these expenses start?

A. Page No. 702 of each report.

Q. What is the last page number?

A. I gave that as 707. It is continued; those pages inclusive.

Q. State the various captions.

A. As stated, I will give the first one, maintenance of way and structures, second, maintenance of equipment, third, traffic, 4th transportation-rail line, fifth is blank; it [fol. 1764] relates only to warterline transportation. And sixth, miscellaneous operations, and seventh, general. The total of expenses for the year 1941 related solely to passenger and allied services——

Q. For the Alabama Great Southern Railroad?

A. Yes sir, still for the Alabama Great Southern Railroad—$983,824. Now the expenses related in common to both freight service and passenger and allied services apportioned to passenger and allied services, and the same general classifications would apply to that as apply to expenses related solely to passenger and allied services.

That total for the year 1941 was $239,079, or a total expense, both related solely to passenger and allied services and that apportioned to passenger and allied services was $1,222,903.

Q. Now that is operating expenses is it?

A. That is operating expenses. The operating revenues for the year 1941 amounted to $1,505,762, and by subtracting the operating expenses of $1,222,903, gives a net operating revenue of $282,859.

Q. That doesn't include taxes or interest?

A. No deductions for taxes or interest.

Q. Did you use the same formula in arriving at a balance for 1942?

A. Yes sir, the same totals. The revenues for 1942 for account of the Alabama Great Southern——

[fol. 1765] Q. That is the operating revenue?

A. That is the operating revenue, passenger and allied services, total $3,156,247. The expenses related solely to passenger and allied services, $1,458,852, and the expenses apportioned to passenger and allied service were $236,908, or a total of $1,695,760. By subtracting the revenues just given, operating revenues and the operating expenses, would give a net operating revenue of $1,406,487.

Mr. Oliver: Mr. Examiner, with the permission of counsel, I would like to ask just one question at this stage for clarification only.

Mr. Bruce: All right.

Mr. Oliver: Mr. Johnson, on page 1 of Exhibit 33, the revenues that you show include, do they not, not only revenue from intrastate business, but the revenues allocated to Alabama for interstate business?

The Witness: Yes sir, that is right.

Mr. Oliver: And of course your expenses include all expenses of the Alabama Great Southern in the State of Alabama in the handling of both interstate and intrastate commerce, is that correct?

The Witness: As I explained, yes sir, that related solely to the intrastate traffic.

Mr. Oliver: I beg your pardon?

The Witness: That related to solely intrastate traffic [fol. 1766] and that apportioned to passenger intrastate traffic.

Mr. Oliver: Wait just a minute. There is no separation as between interstate and intrastate commerce as to your expenses, is there?

The Witness: Yes sir.

Mr. Bruce: Let's see if there is or not.

The Witness: No, I don't think so.

Mr. Bruce: Wait a minute.

The Witness: I think you are right about that.

Mr. Oliver: Let him look at his report. I want the record to be clear on it.

The Witness: This is railway operating expenses within the state.

Mr. Bruce: The expenses are segregated, expenses related solely to freight service, expenses related solely to passenger and allied services for the State of Alabama.

Mr. Oliver: That wasn't the question. I said as between interstate and intrastate commerce; it is not as between passenger and freight.

Mr. Bruce: You have in the next column, and column E and F, on the cover, expenses related in common to both freight service and passenger and allied service, apportioned to freight service, one, column E, that is Column E; apportioned to passenger and allied service, Column F,—so they are segregated.

[fol. 1767] The Witness: In other words, if I understand what Mr. Oliver is talking about, the expenses within the State of Alabama, which bear a certain relation to freight service, and certain relation to passenger service, and they are apportioned and charged to the different services.

Mr. Oliver: But there is no separation as between the handling of interstate commerce and intrastate commerce, is there?

The Witness: Apparently not.

Mr. Bruce: Off the record.

Examiner Stiles: Suspend the record.

(Discussion was had off the record).

Mr. Bruce: Is that all?

Mr. Oliver: That is all I have. Thank you.

Examiner Stiles: That description you have given of page 1 is illustrative of all the other pages?

The Witness: I would like also to mention while we are on page 1 that in using the revenues from the various classes that I mentioned, we had no way of determining the revenues for instance from station, train and boat privileges. We don't know what portion of that should be credited to freight revenues and which portion should be credited to passenger revenues, but obviously some come to both. Another class is rent on buildings and other property, which in some cases amounts to quite a little volume of revenue. We had no way of determining which of that [fol. 1768] should be credited to intrastate passenger revenue, so I had to leave it out. Those two items are not included.

By Mr. Bruce:

Q. Now page 2 shows the Atlanta, Birmingham & Coast Railroad, does it?

A. Yes sir.

Q. How much of that line is located in the State of Alabama, do you know?

A. I can find out in a minute.

Examiner Stiles: What was that question?

(The question was read).

A. According to the annual report of the Atlanta, Birmingham & Coast Railroad for the year 1941, it shows the total mileage operated in the State of Alabama as 154.01 miles.

By Mr. Bruce:

Q. What does it show for Georgia there?

A. For Georgia it shows a total mileage operated of 485.36 miles.

Q. A total of 639.37 miles?

A. That is correct.

Q. Therefore it is a very small or very short railroad, is it not?

A. A very small operation in Alabama, comparatively.

Q. And they show a deficit in 1941 and in 1942, is that not right?

A. Yes sir.

[fol. 1769] Q. And the deficit in 1942 is greater than it was in 1941, is it?

A. Another thing, you will also notice they don't show any revenues for other passenger, milk, dining, buffet, parcel room, storage for baggage. Of course it is possible that on account of the short mileage operated in Alabama they don't have any revenue of that kind; I don't know.

Q. Where is the terminal of this railroad, do you remember?

A. It terminates at Birmingham.

Q. What is the other terminal?

A. Brunswick, Georgia. The terminal within Alabama is at Birmingham.

Q. Where is the other terminal?

A. It runs between Birmingham, Alabama and the Alabama-Georgia state line, just beyond Roanoke, Alabama.

Q. And the other interstate terminal is Brunswick, Georgia, is that right?

A. Brunswick, Georgia, Thomasville, Georgia, and Atlanta, Georgia.

Q. Next is the Atlantic Coast Line?

A. Yes sir.

Q. Page No. 3.

A. Yes sir.

Q. Do they show a profit in 1941?

A. Yes sir.

[fol. 1770] Q. I mean a net operating revenue in 1941?

A. Yes sir, and the same is true for 1942.

Q. The Gulf, Mobile & Ohio shows a deficit also, does it not, on page 5?

A. Yes sir.

Q. What are the figures there in 1941?

A. The net operating deficit?

Q. Yes.

A. $192,506.

Q. What was it in 1942?

A. A deficit of $75,621.

Q. And the Illinois Central has a deficit in 1941 and a profit,—or I mean a net operating revenue figure in 1942, does it?

A. That is correct.

Q. And the Louisville & Nashville now, I want you to explain that.

A. I don't think it is necessary to go back through how we arrived at the figures; just to give you the figures.

A. No, show the revenue.

A. For 1941 it showed a total passenger operating revenue of $3,383,245. Their expenses were a total of $3,516,264, leaving net operating deficit of $133,019.

However, in 1942 their revenue from passenger and allied services were $9,477,784 and total expenses $5,190,668, or a [fol. 1771] net operating revenue of $4,287,116.

Mr. Bruce: May I refer to the Examiner now the exhibit submitted by Mr. Tassin, in which the Louisville & Nashville shows a considerable deficit in Alabama?

Mr. Reynolds: Not for 1942.

Mr. Bruce: 1942?

Mr. Oliver: The record will speak for itself.

Mr. Bruce: The record will speak for itself. The Examiner wanted to know about it, and I did too.

Mr. Oliver: Yes.

Mr. Bruce: We called the witness from the Louisville & Nashville to explain the so-called deficit in the Alabama intrastate operation, which amounted to I think in excess of $300,000 in 1942, is that right, in round figures.

Mr. Oliver: Since you go into that, what the witness did explain was that—no, it was not a deficit in operation. The witness was called specifically to let Mr. Bruce question him on his loss in revenue that he claimed as a result of the difference in the rates, or in the fares rather, I should say.

Mr. Bruce: You are right.

Mr. Oliver: That's right. I just wanted to straighten out the record.

By Mr. Bruce:

Q. Now, the Southern Railway, they had a deficit in 1941, did they not?

A. That is right.

[fol. 1772] Q. That is on page 10 of the exhibit?

A. Yes sir.

Q. What was their operating net revenue in 1942?

A. $1,416,699, and the deficit in 1941 was $47,238.

Q. The Atlanta, Birmingham & Coast Railroad showed a deficit in 1942?

A. Yes sir.

Q. And the Gulf, Mobile & Ohio showed a deficit in 1942, also?

A. Yes sir.

Q. And are these the only deficits?

A. In 1942, yes sir.

Q. In operating revenue in 1942?

A. Yes sir.

Q. Now this exhibit, the authorities, all of the figures on this exhibit that you have were secured from the annual reports of the cariers, and you have these annual reports here with you in the room?

A. Yes sir.

Mr. Bruce: Do you want to look at any of these reports, Mr. Counsel?

Mr. Oliver: No indeed, not at the moment certainly. Did you tender the witness for cross examination?

Mr. Bruce: The witness is your witness.

Examiner Stiles: Cross examine.

[fol. 1773] Cross-examination.

By Mr. Oliver:

Q. Mr. Johnson, turn to your exhibit No. 27, please sir.

A. Yes sir.

Q. As I understand it, your Exhibit 27 covers earnings from both passenger and freight, is that correct?

A. Yes sir, total railway operating revenue.

Q. And the earnings there included or there shown cover both intrastate revenue and the portion of interstate revenue which has been allocated to Alabama?

Mr. Bruce: That is shown in the exhibit; it speaks for itself.

A. That is correct, yes sir.

By Mr. Oliver:

Q. Now, Mr. Johnson, isn't it a fact that the Alabama Great Southern and Southern Railway Company, while they did not separate as between the intrastate revenue and the interstate revenue assigned to Alabama, that they do make the separation as between passenger and freight?

A. Yes sir, that is correct.

Q. Just one other question on that exhibit. For the year 1942 you show no separation as between intrastate revenue and interstate revenue assigned to Alabama, do you? As I recall it, yesterday Mr. Tassin read from your annual report the actual figures——

A. How is that?

[fol. 1774] Mr. Oliver: Just a moment.—Off the record.

Examiner Stiles: Suspend the record.

(Discussion was had off the record.)

Q. At least Mr. Tassin showed the bulk of revenue, a separation as to the bulk of revenue, didn't he?

A. Who is that, Mr. Tassin?

Q. Yes; you were present when he testified, weren't you?

A. I don't recall that.

Q. From your annual report the separation can be determined for the bulk of the revenue shown in Column C, can it not, Mr. Johnson?

A. You mean to separate it as between freight traffic and passenger traffic?

Q. No, as between intrastate revenue and the revenue on interstate, which has been assigned to Alabama?

A. Oh yes, I have another exhibit that will show that, and separate it on interstate and intrastate traffic for passenger and freight service, if that is what you want.

Q. All right, thank you.

Mr. Bruce: State in the record what exhibit that is, what number it is.

The Witness: It is Exhibit No. 29.

By Mr. Oliver:

Q. Exhibit 28 shows, does it not, both the intrastate revenue and the interstate revenue from passengers, mail, express, and milk, assigned to Alabama?

[fol. 1775] A. Yes sir, that is right,—I said Exhibit 29. That shows the total railway passenger operating revenues, where the first item under each carrier in Exhibit 28 shows the actual pasenger revenue, and how it is assigned to intrastate traffic and interstate traffic. I think that is what you had in mind a while ago.

Q. Now your Exhibit 29 I believe shows in the title that it includes both interstate and intrastate commerce?

A. Total, yes sir.

Mr. Bruce: Every one of the exhibits show that, Mr. Examiner.

Mr. Oliver: No, I'm sorry; that particular one does, but some of them don't.

Mr. Bruce: Well, the reference does then.

Q. Now on Exhibit 31, Mr. Johnson, you have a column showing the increase in proposed coach fares over present bus fares, and you use as an illustration the fares from Birmingham to Demopolis, and stated, that your exhibit shows that the increase or proposed increase in the rail rate would result in an increase of $1.36 over the present bus fare.

A. Yes sir, that is correct.

Q. Now, the present rail rate is 55 cents over the present bus rate, isn't it?

A. Yes sir.

Q. So that the increase will be 81 cents over the present [fol. 1776] rail rate?

A. Yes.

Q. And if the rate is established, the difference between the bus rate or the bus fare and the rail fare will be $1.36.

A. That is right.

Q. Now on Exhibit 32, you haven't undertaken to show anything except certain limited trains, have you?

A. Yes sir, what are termed as limited or streamliners in most cases, like the Southerner and the Tennessean.

Q. Doesn't an intrastate passenger in Alabama have the same opportunity to board these trains that an interstate passenger does? You referred to the fact that a passenger in Alabama could board the Southerner of the Southern Railway System at only four points.

A. That is right.

Q. Now that applies to interstate passengers as well as to intrastate passengers, doesn't it?

A. Of course.

Q. Now just one question on Exhibit 33, as to the title page. The last sentence in the heading there is "includes operating revenues and expenses on Alabama intrastate passenger traffic, actual and assigned."

A. Yes sir.

Q. That includes not only the intrastate but the interstate revenue allocated to Alabama, doesn't it?

[fol. 1777] Mr. Bruce: Yes it does.

The Witness: I am sure it does.

Mr. Bruce: My witness stated that.

By Mr. Oliver:

Q. The title I think is just a little misleading. It says "including"——

A. Revenues and expenses on Alabama intrastate passenger traffic, actual and assigned.

Mr. Bruce: Actual and assigned.

The Witness: Well, actually apportioned and assigned.

By Mr. Oliver:

Q. The heading might properly be changed to read "Includes operating revenues and expenses on Alabama intrastate and interstate passenger traffic, actual and assigned," couldn't it?

A. Alabama interstate traffic, yes sir, as long as that is mentioned I think it is all right. Of course it couldn't be Alabama interstate traffic. If you want to include interstate it should be shown that it is what is apportioned or assigned to Alabama.

Mr. Bruce: I think the exhibit has been explained sufficiently that the Examiner knows what it is about. I refuse to amend the caption.

Mr. Oliver: It is perfectly all right. I don't care whether it is amended or not, just so the record shows the facts about it. That is all that I have from this witness at this time.

[fol. 1778] Mr. Reynolds: I want to ask him one or two questions.

By Mr. Reynolds:

Q. Are you, as the rate clerk of the Alabama Commission, opposed to the railroads operating in Alabama earning a net operating revenue?

Mr. Bruce: I refuse to allow—I object. The witness is an employee of the Commission. He can't state the position of the Commission.

Examiner Stiles: Objection sustained.

By Mr. Reynolds:

Q. Well, are you opposed to the railroads operating in Alabama earning a net operating revenue?

Mr. Bruce: The same objection.

Examiner Stiles: Objection sustained.

By Mr. Reynolds:

Q. Is there anything unusual about limited trains stopping at only the larger points?

A. No sir, it is not. It is very unusual that—passengers at smaller points can't get the benefit of it.

Q. Any time a limited train stops only at the larger points, the passenger at a smaller place has to go to one of the places at which it does stop in order to board it?

A. That is correct.

Q. That condition exists not only in Alabama, but in other states, doesn't it?

A. I should imagine so.

Q. And you said a while ago I think that there is nothing unusual about that?

[fol. 1779] A. A streamliner stopping at larger points?

Q. Only at the larger points; all limited trains stop only at the larger points?

A. That is right; you are correct about that, they don't make stops at local stations.

Q. On your Exhibit 31, do you contend that the coach fare should be made with relation, the railroad coach fare, should be made with relation to the bus fare?

Mr. Bruce: I object.

A. I would not.

Mr. Bruce: The witness has stated what is in the tariff of the carriers. He doesn't know why the bus fares are lower. That is a matter for the buses to testify about.

Mr. Reynolds. He put the exhibit in. I can certainly inquire as to the purpose of the showing, and that is what I am doing.

Examiner Stiles: It went further than that.

By Mr. Reynolds:

Q. What is the purpose of Exhibit No. 31 Mr. Johnson?

A. Simply to show the actual present rail coach fares and the present bus fares, and what the proposed increase in the rail coach fare would be over the present bus fare; just what we have on file.

Q. Do you contend that there is any fixed relationship between the existing railroad coach fares and the existing [fol. 1780] bus fares at the present time?

A. No sir.

Q. Do you contend that there should be?

Mr. Bruce: I object to that question.

Mr. Reynolds: I think that is a proper question. What's wrong with it? He just said he objected, without giving any reason.

Examiner Stiles: This witness is not a policy-making official.

Mr. Reynolds: Well, he is speaking for a policy-making body.

Mr. Bruce: No.

Mr. Reynolds: He is the only person they put up to speak for them on this matter.

Examiner Stiles: I think it is quite different from the case of the traffic man of a railroad, who is one of those who makes the rates for the railroad, where this is a rate clerk of the Alabama Commission. I think the objection is well taken. I sustain the the objection.

Mr. Reynolds: Very well, I won't press it.

By Mr. Reynolds:

Q. Now the coach fares on railroad trains that you show under the heading "Proposed rail coach fares," they are on the same basis as coach fares now in effect over certain railroads operating in the State of Alabama, are they not?

[fol. 1781] A. Under the proposed rail coach fares?

Q. Yes sir. Certain railroads in Alabama have coach fares today on the same basis?

A. Oh yes, yes sir, that is right.

Mr. Reynolds: I think that is all.

Examiner Stiles: Is there any redirect?

Redirect examination.

By Mr. Bruce:

Q. Mr. Johnson, when you made up Exhibit No. 31, you were told what I desired to develop in that exhibit, were you not?

A. That is right.

Q. Were you told that I wanted to show what would occur if the suspended rates were approved by the Commission and became effective?

A. That is right.

Q. And the relationship between the bus and the so-called coach fares of the railroads; is that right?

A. That is correct.

Q. That is true of every one of your exhibits, that you were given a purpose for it by me?

A. Simply to compile the information you desired to exhibit, yes sir.

Mr. Bruce: That is all I have.

Examiner Stiles: Do you wish to tender the exhibits now?

Mr. Bruce: Yes.

[fol. 1782] Examiner Stiles: Very well.

Mr. Bruce: May I submit in the record the exhibits, Mr. Examiner?

Examiner Stiles: Exhibits 27 to 33 inclusive are received in evidence.

(Exhibits Nos. 27 to 33 inclusive, Witness Johnson, were received in evidence.)

Examiner Stiles: You are excused.

(Witness excused.)

Examiner Stiles: We will take a short recess.

(A short recess was taken.)

Examiner Stiles: Let's come to order.
Mr. Bruce: Mr. Examiner, I will call Mr. Mohr.

JACOB MOHR was sworn and testified as follows:

Direct examination.

By Mr. Bruce:

Q. Please state your name in full.
A. Jacob Mohr.
Q. How do you spell that?
A. J-a-c-o-b M-o-h-r.
Q. And you live in Montgomery?
A. Yes.
Q. Are you employed by the Alabama Public Service Commission at present?
A. By the Alabama Public Service Commission.
[fol. 1783] Q. What is your title?
A. Senior accountant.
Q. How long have you been employed by the State of Alabama?
A. Since 1932.
Q. Has all of your employment been in accounting with the State?
A. All of it with the State of Alabama, yes.
Q. What was your experience prior to your employment with the State of Alabama?
A. I was accountant, cost accountant, and office manager for a construction company, Bosworth-Smith Company of Montgomery, Alabama, and C. C. and F. R. Smith Construction Company, Montgomery, Alabama.
Q. For how many years?
A. That has been over-all since 1928.
Q. Have you prepared certain exhibits?
A. Yes.
Q. Explain your Exhibit No. 34.

(Exhibit No. 34, Witness Mohr, was identified for the record.)

A. Exhibit No. 34 is a statement showing the revenues and expenses and net railway operating income for the three months period ending March 1943, and 1942. This will be March 31, if you want to go to that extent. And they cover the Southern District.

[fol. 1784] Q. And have you used only these carriers, have you shown the figures only for these carriers that are petitioners in this proceeding on this exhibit?

A. That is correct.

Q. So it does not include the entire Southern District?

A. The Southern District figures for the petitioning carriers. The authority for these—I beg your pardon.

Q. Proceed. What is the authority?

A. The authority for these figures is the publication of the Association of American Railroads, Bureau of Railway Economics, Washington, D. C.

Q. Explain the first line of your exhibit.

A. You want that horizontal line on the Alabama Great Southern, the figures for that?

Q. Yes sir.

A. The average miles of road operated by the Alabama Great Southern is shown as 315.

Q. That is miles?

A. That is the average miles, 315. That is the freight revenue.

Examiner Stiles: I think the exhibit is fully explanatory, self-explanatory.

The Witness: I think it is self-explanatory, Mr. Examiner, yes.

By Mr. Bruce:

Q. Those are the figures shown on your authority, are [fol. 1785] they?

A. Yes sir.

Q. Proceed.

A. Freight revenues, accounts 101 and 121, Alabama Great Southern for the year 1943, amounted to $4,159,025, cents omitted.

Examiner Stiles: You mean for the first three months of 1943?

The Witness: For the first three months of 1943. For the same period in 1942 the amount was $2,941,186. Cents have been omitted in all figures.

Passenger revenues for the first three months of 1943, accounts 102 and 122, were $1,020,816. For the same period in 1942 they were $437,964.

By Mr. Bruce:

Q. And the first period that you give figures for, that is in 1943, what is that?

A. Yes.

Q. Proceed.

A. Making a total operating revenue for the three months period in 1943 of $5,445,005, and for the same period in 1942 $3,581,600; with total operating expenses for the first three months of 1943 showing $2,853,869 and for the same period in 1942 of $2,127,926.

And, continuing, we show a net railway operating income for the first three months of 1943 of $673,373 as against an [fol. 1786] income for the corresponding period of 1942 of $507,251.

Q. Now, going down to the Gulf, Mobile & Ohio Railroad, give the same explanation please.

Mr. Oliver: Now, Mr. Examiner, if the explanation is going to consist of reading figures, I think we really are wasting a lot of time.

Mr. Bruce: Mr. Examiner, I have a reason for doing it. And incidentally, I think that throughout the examination of the witnesses for the carriers that I have not objected to this gentleman, Mr. Tassin, reading a mass of figures into the record in explanation of his exhibit. I think I have a right to have my witness explain the exhibit.

Mr. Oliver: So far as I am personally concerned, it is all right with me, if you want to read these figures, or if the Examiner wants to permit it. All I am going to do is to object to it at this time formally, and I think we are wasting time, and we are wasting transcript.

Mr. Reynolds: I join in that.

Mr. Oliver: I object to the witness reading the figures on an exhibit which is perfectly plain on its face.

Mr. Reynolds: I join in that objection.

Examiner Stiles: I think the exhibit is readily understandable. It doesn't require to my mind any explanation.

If the counsel wants the witness to comment on some certain figures in it, why he may do that.

[fol. 1787] By Mr. Bruce:

Q. I will have you read for me the net railway operating income for the Gulf, Mobile & Ohio for the year 1943, in comparison with the year 1942, for that period in 1943 compared with the same period in 1942.

A. The net railway operating income for the first three months of 1943 of the Gulf, Mobile & Ohio Railroad shows as $1,362,271 compared with $796,488 in 1942, in the same period.

Q. Then give me the same figures now for the Seaboard Air Line.

A. The net railway operating income of the Seaboard Air Line Railway for the first three months of 1943 was $11,221,000 in round figures, compared with $4,395,301 for the same period in 1942.

Q. Do all of the carriers show an increase in net railway operating income on your Exhibit No. 34?

A. Yes, every carrier does show an increase.

Q. What is your exhibit 35, please?

(Exhibit No. 35, Witness Mohr, was marked for identification.)

Examiner Stiles: It seems to me this is an exhibit that doesn't require any explanation. It is very clear in the way it is set forth.

By Mr. Bruce:

Q. Is this the same class of an exhibit, Mr. Mohr?

A. Yes, except that it covers the twelve months period ending in December of 1942 and 1941.

[fol. 1788] Q. In that exhibit give me the net operating income of the Illinois Central for 1942 and for 1941.

A. Net railway operating income of the Illinois Central Railway, including the Y. & M. V., for the calendar year 1942 was $40,957,856, as against $25,903,251 for the calendar year 1941.

Q. The Atlantic Coast Line figures, give me those same figures, please.

A. The net railway operating income of the Atlantic Coast Line Railroad Company for the year 1942 was $21,-

195,567, as compared with $11,080,953 for the calendar year 1941.

Q. This exhibit shows the same results for the twelve months in 1942 as Exhibit No. 34 shows for the three months period of 1942 against the three months in 1943, is that right, Mr. Mohr?

A. Yes, it shows an increase for every carrier.

Q. Explain your Exhibit No. 36.

(Exhibit No. 36, Witness Mohr, was marked for identification.)

A. My Exhibit No. 36 is a statement showing the railway operating revenues and expenses, railways of Class I in the entire United States, exclusive of switching and terminal companies.

Q. That exhibit is self-explanatory, is it not?

A. I would think so. It seems to me that it is perfectly clear.

[fol. 1789] Q. Tell me what the passenger increase was for the Class I railroads in 1942, for the first three months of 1942, in comparison with the first three months of 1943.

A. The increase in passenger revenues for the first three months of 1943 over the same period in 1942 was $62,341,588.

Q. And that is for the twelve months, isn't it,—or for the month of March, I mean?

A. That is for the month of March. Change that please.

Q. What is it for the three months ending March 31, 1943?

A. The three months period shows an increase in passenger revenues for the first three months of 1943 over 1942 of $170,848,032.

Q. And what percentage of increase is that?

A. It is 100.8 per cent increase.

Q. That is for the period of three months?

A. That is for a period of three months, ending March 31st.

Q. Page 2 of that exhibit is what?

A. Page 2 of Exhibit 36 outlines the amount of depreciation included.

Q. Read your caption please. Go ahead and continue.

A. The caption is the same.

Q. Yes; that is in the first page.

A. That shows the amount of depreciation included in maintenance of way and structures and equipment expenses

for the month of March and for the three months ending [fol. 1790] March 31 for the years 1943 and 1942.

Q. What are the figures?

A. The amount of depreciation for the month of March 1943 was $26,535,985 as against $19,695,109 for the month of March 1942. For the three months period ending March 31 in 1943 the depreciation was $79,496,940, compared with $56,285,336.

Mr. Bruce: Mr. Examiner, the reason that I am pointing to this particular item is due to the fact that the carriers did not originally set aside depreciation amounts for the retirement of their equipment. That is a new practice that has been permitted by the Commission. I don't remember exactly when, Mr. Tassin?

Mr. Tassin: On the main road, not equipment. It is effective in 1943; 1943, on roads.

Mr. Bruce: I call to your attention that this is a sizeable amount that is now deducted and set aside for the retirement of equipment, and maintenance of way, and what not.

By Mr. Bruce:

Q. Now your page No. 3 on your exhibit Mr. Mohr is what?

A. Page 3 of Exhibit No. 36 shows the rate of return on property investments.

Q. For the twelve months?

A. For the twelve months ended March 31, and the years 1943 and 1942.

Q. State what it is in the Southern District, exclusive [fol. 1791] of the Pocahontas Region. What is the amount of net railway operating income?

A. The amount of net railway operating income for the twelve months ending March 31, 1943 for the Southern District, exclusive of the Pocahontas Region, was $233,565,154. For 1942 this amount was $142,865,761, making a rate of return for the twelve months ending March 31, 1943 of 6.88 per cent, as against a return for the twelve months ending March 1942 of 4.36 per cent.

Q. Is the rate of return greater in the Southern District than in any other district shown in this table?

A. Yes.

Q. Explain your next exhibit, Exhibit No. 37.

(Exhibit No. 37, Witness Mohr, was marked for identification.)

A. Exhibit No. 37 is a statement showing the railway revenues and expenses, railways of Class I in the United States, exclusive of switching and terminal companies.

Mr. Bruce: I don't think that this exhibit needs any explanation, Mr. Examiner, excepting the rate of return shown on page 2. I will have my witness show what that is in the Southern District, not including the Pocahontas Region.

By Mr. Bruce:

Q. State what that is.

A. The net railway operating income for the Southern District, exclusive of the Pocahontas Region, for the calen- [fol. 1792] dar year 1942 was $214,151,928 as against $138,673,395 for the calendar year 1941. These figures show a return of 6.54 per cent for the year 1942, compared with a return of 4.35 per cent for the calendar year 1941.

Q. And the average for the U. S. is what, for 1942 and for 1941?

A. For the United States for the year 1942 the average rate of return was 5.56 per cent, compared with a return of 3.79 per cent for the year 1941.

Q. Read the note at the bottom of page 2 of Exhibit No. 37, Mr. Mohr.

Examiner Stiles: The examiner will take note of that, Mr. Bruce.

Mr. Bruce: Will you take notice of that, Mr. Examiner?

Examiner Stiles: Yes.

By Mr. Bruce:

Q. Explain your exhibit No. 38.

(Exhibit No. 38, witness Mohr, was marked for identification.)

A. Exhibit 38 is a statement showing the total operating revenues, expenses and net railway operating income for the United States by months for the years 1937 through 1942, inclusive, railways of Class I, exclusive of switching and terminal companies.

Q. The first section is total operating revenues, is it?

A. Yes.

[fol. 1793] Q. Show the difference in total operating revenue for the year 1937 in comparison with the year 1942?

A. The total operating revenues for the year 1942 were $7,466,227,054, compared with $4,166,068,602 for the year 1937.

Q. Turn to page 2. Page 2 of the first section is total operating expenses, is it not?

A. Yes sir.

Q. Read the totals in 1937, and also the totals in 1942, total operating expenses?

A. For the year 1942 the total operating expenses amounted to $4,601,429,943 compared with $3,119,064,934 for the year 1937.

Q. Give me the same figures for the same years on net railway operating income.

A. The net railway operating income for the year 1942 was $1,480,940,760, compared with $590,203,925 for the year 1937.

Q. Now your page 3, is that the same as page 1, but including the first three months of 1943?

A. That is correct, with the exception that the total calendar year based on annual reports for the years 1938 to 1941, and revised monthly reports for 1942 do not always agree with the sum of the monthly totals. The figures represent the same thing, but if you check them carefully you will find that they are not always the same figures.

Q. I will ask you to read for me the figures under 1938 for the month of March in total operating revenue. That [fol. 1794] is in the first section.

A. Total operating revenues for the month of March 1938 were $283,017,000.

Examiner Stiles: I suggest if you want to direct particular attention to the month of March that you merely state that you want the Examiner to particularly note the month of March, and the Examiner can read these figures.

Mr. Bruce: The month of March, Mr. Examiner, is the last complete figures that we were able to get from the Interstate Commerce Commission, or the Association of American Railroads.

However, since these exhibits were made, I have a sheet, Sheet N 100, showing the month of April, and I will have

to testify on that sheet orally from the fact I didn't have time to prepare an exhibit on it. I want to particularly dwell on April, due to the fact the carriers used April 1942 as an example month in arriving at their so-called averages.

Examiner Stiles: All right.

Mr. Bruce: I don't think I need give you this detailed information, but I want to show you the month of March for 1943 in comparison with 1938, and the operating expenses; then we will leave that exhibit or that sheet.

By Mr. Bruce:

Q. Will you state what the total operating revenues for the month of March 1943 were, Mr. Mohr?

A. The total operating revenues for the month of March 1943 were $756,250,563.

[fol. 1795] Q. Put the figures for 1938 into the record.

A. The corresponding figure for the month of March 1938 is $283,017,974.

Mr. Bruce: Mr. Examiner, the reason that I reproduced the figures in here as an exhibit is going to show the steady progress of increase, and that there has been a continuous increase in operating revenues, and that the net has correspondingly increased, and that the operating expenses have not kept pace with the net increases, or the operating revenue. It is also in percentage.

By Mr. Bruce:

Q. Explain your page 4 of this exhibit now Mr. Mohr.

A. Page 4 of Exhibit 38 is a statement showing the operating income account for the United States for the three months' period ending March 1938 to 1943, Railways of Class I, exclusive of switching and terminal companies.

Examiner Stiles: That is another exhibit that I think is fully self-explanatory.

Mr. Bruce: With that statement from the Examiner, we will pass on to page 5.

By Mr. Bruce:

Q. Page 5 is what?

A. Page 5 of Exhibit 38 is a statement showing the operating income account for the United States for the twelve

months ending December 1937 to 1942, for Railways of Class I, exclusive of switching and terminal companies.

[fol. 1796] Examiner Stiles: That too is self-explanatory.

Mr. Bruce: That is all I have.

Mr. Oliver: I have no questions.

Mr. Reynolds: I just want to ask one.

Cross-examination.

By Mr. Reynolds:

Q. I understood you to say, Mr. Mohr, in connection with your Exhibit 35 that the net railway operating income of all the carriers shown on that exhibit was greater in 1942 than it was in 1941. Did you make that statement?

A. I made that statement.

Q. I call your attention to the net railway operating income of the Louisville & Nashville Railroad for those two years, and ask you if it is not a fact that the net railway operating income of the L. & N. was less in 1942 than it was in 1943?

A. That is correct, Mr. Reynolds.

Q. The L. & N. is one of the principal lines operating in Alabama?

A. That is correct.

Mr. Reynolds: That is all.

Mr. Bruce: I offer exhibits Nos. 34 to 38, inclusive, Mr. Examiner.

Examiner Stiles: Exhibits 34 to 38 inclusive are received in evidence.

(Exhibits Nos. 34 to 38 inclusive, Witness Mohr, were received in evidence.)

[fol. 1797] Examiner Stiles: The witness is excused.

(Witness excused.)

Mr. Bruce: Mr. Examiner, I have already been sworn, on yesterday.

Examiner Stiles: Yes.

Mr. Bruce: I wish to continue my testimony.

Examiner Stiles: You may proceed.

J. G. Bruce, having been previously sworn, was recalled and testified as follows:

Direct examination (continued):

The Witness: I offer my Exhibit No. 39, which is a statement reproducing in part the report of the Commission in case No. 2650, passenger fares and surcharges, 214 ICC 188, etc.

(Exhibit No. 39, Witness Bruce, was marked for identification.)

This is the history which the Commission placed in its report, Mr. Examiner, in that case. That was up to 1936, the date on which the Commission made its decision in 1936, March 31, 1936. And therefore, the explanation as given by Witness Aiken as to the history of the Southern passenger rates from 1937 to the present time is a correct continuation of the history which this Commission placed in its report.

I have reproduced this portion of the Commission's report due to the fact that the Southern led the way in the re-
[fol. 1798] duction of passenger fares, and this history is very complete, and it shows the reason thereof.

I call your attention particularly to the closing statement made by the Commission, as shown on page No. 5, in which the Commission stated: "This respondent feels strongly"——

Mr. Oliver: Mr. Examiner, I am going to object. It is bad enough to put this in the record, but I am not objecting to that, but I do object to the witness putting it in as an exhibit and then reading it.

The Witness: This is the strangest objection that I have listened to for a long time.

Mr. Oliver: I know; I appreciate that it would appear so to you, Mr. Bruce, but I still register the objection.

The Witness: It shows the position of the Southern Railroad in 1936, Mr. Examiner, in comparison with the petition or position of the Southern Railroad today, who has induced or who has informed other carriers in the Southern Region in reference to what should be placed in evidence in this case, in which an attempt is being made to increase these coach fares and other fares 33⅓ per cent.

Mr. Oliver: After the speech, I still object to the witness

reading into the record from this exhibit, and I insist on it.

Mr. Reynolds: And the statement that the Southern Railway induced other lines to participate in this case, and [fol. 1799] to put in certain evidence is just not a fact.

The Witness: I am referring now to the testimony of the witness, the financial witness, who appeared here yesterday for the L. & N. Railroad, who stated that he had received certain information, was given the month of April as an example month by the Southern Railway.

Mr. Oliver: I don't want to pursue that, but I do want a ruling on my objection.

Examiner Stiles: The witness is simply directing particular attention to the last paragraph of this exhibit, the statement of the Commission. You want that particularly considered?

The Witness: That will do it, Mr. Examiner.

Mr. Oliver: That is perfectly all right. I think that is very nice.

The Witness: I will now offer my next exhibit.

Examiner Stiles: That will be No. 40.

(Exhibit No. 40, Witness Bruce, was marked for identification.)

The Witness: It is composed of a number of sheets which were furnished to the Alabama Public Service Commission by the Interstate Commerce Commission, or the information was furnished by the Interstate Commerce Commission.

The first sheet is a statement showing passenger traffic statistics, other than commutation, of Class I steam rail-[fol. 1800] ways in the United States, separated as between coach traffic and parlor and sleeping car traffic. It is compiled from 119 reports, representing 128 steam railways for twelve months ending with December 1942, and 1941 in comparison.

Examiner Stiles: It says for the month of December, instead of 12 months.

The Witness: Yes, sir, for the month of December.

Examiner Stiles: Instead of twelve months.

The Witness: That is correct. Now page No. 2, or the reverse of this page, shows the same information for twelve months. I am not going to dwell at all on the month of

December, but only speak about the percentage of increases which are shown in the first section, caption, United States total 1942-1941, and on the passenger revenue whole dollars in coaches.

It shows that the increase for the United States in passenger revenue, dollars, in 1942 over 1941 was 107.5 per cent change. In the Southern Region, under the same explanation the percentage of increase or change rather is 123.4. That is in coaches.

I call your particular attention, Mr. Examiner, to passenger revenue whole dollars in parlor and sleeping cars for the Southern Region. It shows a percentage of change of 146.9 there. The exhibit is very self-explanatory, and I merely place it in the record for the convenience of the [fol. 1801] Examiner, so that you won't have to refer to the Commission's records.

The next is sheet No. N 100. This sheet is placed before the Commission to substantiate the exhibits introduced by Witness Mohr, due to the fact that we did not use the Commission's figures in arriving at or in making his exhibits, but instead used the railroads' Bureau of Economics figures instead.

Examiner Stiles: That is a separate exhibit?

The Witness: No sir, this is the same exhibit.

Mr. Oliver: It is all one exhibit?

The Witness: If you will take your clips off of the exhibits, you will find these are stapled together.

Mr. Oliver: They have not been numbered.

The Witness: The sheets are numbered. For instance, if you want to, I will be glad to number them by the page.

Mr. Oliver: No. Off the record.

(Discussion was had off the record.)

Mr. Oliver: All right.

The Witness: This statement shows operating revenue and operating expenses of Class I steam railways in the United States, switching and terminal companies not included, for 12 months ending with December 1942 and 1941.

This will show the same figures that Mr. Mohr has shown in his exhibit in regards to the United States revenues on freight, passenger, mail express and allied services. The total is exactly the same, $7,466,227,054 in 1942, and in 1941

[fol. 1802] it was $5,346;699,998, or a percentage increase in the United States of 39.6.

At the bottom of the page I want to call your attention to a note which shows a double star, two stars, and which states, "Includes Federal Income Tax, Surtax and Excise profits tax, as follows", and it gives the amount of the taxes which the carriers have paid, and that is segregated as to districts, Mr. Examiner.

It shows that the Southern Region, exclusive of the Pocahontas District, paid last year a total of $130,761,287 in income and excise taxes.

I refer there to Statement No. M 213, (OS-B). On page 2 thereof, which is on the reverse of page 1, this shows passenger train performance of Class I steam railways in the United States exclusive of switching and terminal companies for 12 months ending with December 1942 and 1941.

I make particular reference to Item No. 3, for the United States, and the same item for the Southern Region. I also make reference to all of Item No. 4, for the United States and for the Southern Region; to Item No. 7 for the United States and also for the Southern Region; Item No. 10, Item No. 11, and the total at the bottom of the page, which shows the numeral ahead of it "13-03." Each of the last should be compared, United States averages, with the Southern District averages.

I next make reference to Statement No. M 150, captioned [fol. 1803] "Operating revenues and expenses, selected items for large steam railways". This includes the month of December 1942 and 1941, and in the second section shows for twelve months ending with December 1942 and 1941, in comparison. I refer you to the Southern Region, and particularly to the operating ratio shown under the caption "AA" in brackets.

The first railroad shown in the Southern Region is the Atlantic Coast Line. The operating ratio per cent for the Atlantic Coast Line for the year 1942 was 54.7. For the year 1941 it was 69.5. I will skip the Central of Georgia, for no particular reason, and go to the Gulf, Mobile & Ohio, and there in 1942 the Gulf, Mobile & Ohio had an operating ratio of 62.3 against a ratio of 68.2 in 1941.

The Louisville & Nashville Railroad is one of the heavy operators, or the heaviest operator in Alabama, and it

shows an operating ratio in 1942 of 58.7 against a ratio of 65.3 in 1941.

And the Southern had an operating ratio of 55.6 in 1942 against the ratio of 63.3 in 1941.

I next make reference to page 2 of Statement M 230 (OS-E) in brackets, and I drop down to the group of items No. 5, and I make reference to the price of coal per net ton at the mine. For the United States in 1942 it was $2.13, and in 1941 it was $2.02. For the Southern Region exclusive of the Pocahontas District in 1942 it was $2.16, and in 1941 it was $2.03.

[fol. 1804] Various fuel items are shown in there, Mr. Examiner, in this statement, in a group of items numbered 6, 7, 8 and 9, and I call these to your particular attention.

I next make reference to Statement No. M 220 (OS-D) in brackets, and on page 2 thereof. The first bracket is the United States. First I will state what the statement shows. It is revenue traffic statistics of Class I steam railways in the United States for twelve months ending with December 1942 and 1941. I call attention particularly to item No. 10, the passenger train miles, for the United States 429,920,131 miles in 1942, and in 1941 it was 403,621,304.

Now, we will go to the same item in the Southern Region, in the bracket below the United States, and make reference to Item No. 10, which applies to the Southern Region. It shows that the passenger train miles in 1942 in Southern Region were 65,968,420 and in 1941 it was 660,575,332.

I give you these figures and make particular reference to them due to the fact the increase in passenger car miles is not very appreciable for the amount of revenue that the carriers are now receiving. It shows the cars must be much heavier loaded.

In the averages, there, Mr. Examiner, I call your attention to Items Nos. 12, 13, 14, 15-01,—and in fact to the balance of the items contained on that page in the Southern District.

[fol. 1805] I now make reference to statement No. M 125, and pages 2 and 3 thereof, which shows selected income items by regions and districts, Class I steam railways, calendar years 1942 and 1941. First, you have the net railway operating income again, the total income, the deductions, total deductions, and the net income after depreciation and amortization of defense projects.

Now the Southern District is shown in there, and below it the Pocahontas Region, and the Southern District are segregated. I make reference to the Southern Region only, not the Pocahontas District, because that is an inflated district, and we don't want to use that.

It shows that in 1942 the carriers set aside net income after depreciation and amortization of Defense Projects for the Southern Region, 1942, $152,723,248, against $75,472,079 in 1941.

Examiner Stiles: Did you state that correctly? Read what the witness said.

(The record was read.)

Examiner Stiles: That is correct.

The Witness: Now I didn't go to the other column, due to the fact that this is the meat in the information, which I wish to transmit to you, Mr. Examiner, anyway.

Now, referring to the list of the carriers in here you will find the Atlantic Coast Line system, you will find the At-
[fol. 1806] lanta & West Point Railroad, you will find the Louisville & Nashville, and many of the carriers that are in the Southern Region who are petitioners herein, and you can see what their total income was individually so far as their system is concerned from this sheet, Mr. Examiner, Sheet No. 3.

That is all of my explanation for this exhibit, Mr. Examiner.

Examiner Stiles: The difference between the figures in the block before the last one and the last block would show the amount of depreciation and amortization for defense projects?

The Witness: Yes sir. And I am not positive about that, but I think Mr. Tassin will agree with me that the Commission permits the amortization and retirement of defense projects within five years. Isn't that right?

Mr. Tassin: That is correct.

The Witness: And that started in 1942.

Mr. Tassin: You have to obtain authorization for that, though.

The Witness: Which indicates to me that while the carriers have done a good job on behalf of the war, and so on and so forth, they are being paid for it. These added expenses which are now incurred through added facilities——

Mr. Reynolds: I object to that as argumentative.

The Witness: —are being——

[fol. 1807] Mr. Reynolds: I have an objection: I would like a ruling.

Examiner Stiles: Let me hear what the statement is.

The Witness: Will you read my statement?

(The record was read.)

The Witness: (Continuing) —taken care of by the Commission permitting the setting aside over a period of five years of sufficient money to defray the cost of these added facilities that they are furnishing at the government camps and so forth.

Mr. Reynolds: I object to it as argumentative, Mr. Examiner.

Examiner Stiles: The objection is overruled.

The Witness: I will now offer my next exhibit.

Examiner Stiles: It will be identified as Exhibit No. 41.

(Exhibit No. 41, Witness Bruce, was marked for identification.)

The Witness: It is a reproduction of a letter received——

Mr. Reynolds: I object to that on the ground that it is hearsay, and its receipt in evidence deprives the respondents of their right of cross examination.

The Witness: I have the original letter, if you wish to see it.

Examiner Stiles: Suspend the record while the Examiner reads it.

(Discussion was had off the record.)

[fol. 1808] Examiner Stiles: Your objection is that it is because it is a personal letter, instead of some publication put out by the O. D. T.?

Mr. Reynolds: I further object on the ground it is irrelevant and immaterial.

The Witness: It is material due to the fact that the carriers have continually stated how much added revenue,—I mean added expense they had been placed to against their operations, due to military movements.

Examiner Stiles: I will overrule the objection on the last ground that you stated; but I will have to sustain it on the first ground.

Mr. Reynolds: Well, I continue the first one.

Examiner Stiles: What did you say?

Mr. Reynolds: I press the first one.

Examiner Stiles: I will have to sustain it on that ground. It is not an official publication of the O. D. T. It is only a letter from an official of that organization, and respondent objects on the ground that he is deprived of the right of cross examination. I have to sustain that objection on that ground.

That was identified as Exhibit No. 41, but in view of the objection it will not be received in evidence.

(Exhibit No. 41, Witness Bruce, was thereupon *rejected*.)

Mr. Burkett: It is still noted in the record as that exhibit, [fol. 1809] is it, Mr. Examiner?

Examiner Stiles: Yes.

Mr. Burkett: And the next one will be No. 42?

Examiner Stiles: That is correct.

The Witness: Since you have made your ruling, I will ask you if you read my letter addressed to Commissioner Eastman on page 2 thereof.

Examiner Stiles: Yes sir.

The Witness: You have read that?

Examiner Stiles: Yes sir.

The Witness: My next exhibit is No. 42.

Examiner Stiles: It will be identified as No. 42.

(Exhibit No. 42, Witness Bruce, was marked for identification.)

The Witness: It is a statement reproducing excerpts from the amendment by Congress of the Emergency Price Control Act of 1942, which said amendment was approved as of October 2, 1942 by Congress; and also excerpts from the Executive Order of the President of the United States, No. 9328, dated April 8, 1943.

The first statement, or the first excerpt rather is from the Congressional Record of the United States, and the second is,—my authority is the Executive Order of the President, which is a public document. I reproduced the amendment to the Office of Price Control Act of October [fol. 1810] 2, 1942, merely to show that the Office of Price Administration had a right to intervene, and even though the Alabama Commission did not act upon their petition, the fact remains that they were within the law to appear at least when the hearing was held.

Now the President's Executive Order, does counsel object to my reading that into the record?

Mr. Oliver: I do, yes. If you are going to read it in the record——

The Witness: I will make reference to it, Mr. Examiner, and I call your attention particularly to the fact that the President has practically ordered all regulatory bodies, including the state, and the Federal and municipal governments, and what not, against increases for utilities, public utilities.

Mr. Reynolds: I object to that statement.

Mr. Oliver: I object too, and I ask it be stricken from the record.

Examiner Stiles: The order speaks for itself.

Mr. Oliver: Yes, the order speaks for itself.

The Witness: I will ask that I be permitted to read the statement now.

Examiner Stiles: The statement is already in the record, or will be as soon as I receive that exhibit, and I am going to receive it when you tender it, so it is not necessary to read it. It is a part of the record.

[fol. 1811] The Witness: Then I will offer my next exhibit.

Examiner Stiles: No. 43.

(Exhibit No. 43, Witness Bruce, was marked for identification.)

The Witness: This is a reproduction of a statement made or rather a part of the opinion made by Hon. Joseph B. Eastman, Director, Office of Defense Transportation, and a member of the Interstate Commerce Commission in his concurring opinion in Ex Parte 148 report on further hearing, decided April 6, 1943. And my authority is Sheets 40 and 41 of the mimeographed report of the Interstate Commerce Commission. I ask the Examiner to refresh his memory. I know he has read it already, and I won't attempt to antagonize my opposing counsel.

My next exhibit is No. 44.

Examiner Stiles: It will be marked No. 44.

(Exhibit No. 44, Witness Bruce, was marked for identification.)

The Witness: It is a statement reproducing the Commission's report, heading, ICC Case No. 26550, passenger fares

and surcharges decided on February 28, 1936. This case was decided on February 28, 1936, and I call the attention of the Examiner to Findings No. 2, the experimental fare basis in the Southern and Western District found not to be unreasonable or otherwise unlawful; and that was the 1.5 cent fare.

My next exhibit is No. 45.

Examiner Stiles: Yes.

[fol. 1812] (Exhibit No. 45, Witness Bruce, was marked for identification.)

The Witness: And this is a statement reproducing in part the Commission's report and order and findings in case No. 26,575, decided March 9, 1936, captioned Georgia Intrastate fares and charges. This is a section 13 investigation, and this statement, Mr. Examiner, bears out my cross examination of several witnesses in bringing out the fact that the first class fares in Georgia are at the present time on a 2.2 basis, the same as the carriers propose to publish for coach fares in the State of Alabama; and that this fare of 2.2 cents which used to be 2 cents, but was amended by the Commission's order in Ex Parte 148 whereby they were granted a ten per cent increase, has been in force in Georgia, applying on Georgia intrastate traffic since March 9, 1936, and the Commission approved the order,—that is refused to order the Georgia Commission to amend or cancel its order in any way whatsoever.

At that time Georgia had a coach fare of 1.5 cents, and that is still in effect with the exception of the increases granted by the Commission in Ex Parte 148.

I next offer my Exhibit No. 46.

Examiner Stiles: It will be marked for identification Exhibit No. 46.

(Exhibit No. 46, Witness Bruce, was marked for identification.)

[fol. 1813] The Witness: This is a statement reproducing the condensed opinion of the United States Supreme Court in Baltimore & Ohio Southwestern Railway Company v. Settle and others, partners, under the firm name of W. H. Settle & Company.

Mr. Reynolds: I object to it on the ground it is not a proper exhibit; that is, it is not proper to reproduce in

exhibit form and offer in evidence a portion of the opinion of courts.

The Witness: I have the authority, 260 U. S. 166, and the second page, Mr. Examiner, reproduces another part of it, and I ask the Examiner to read and make reference to this decision of the United States Supreme Court.

Examiner Stiles: You are asking the Commission to rely on the original report, and this is just submitted for the convenient reference of the Commission?

The Witness: Yes sir.

Examiner Stiles: In view of the way in which you have tendered it, the objection is overruled.

The Witness: Page 2 thereof makes reference to a number of cases in which the Commission made a ruling,—I mean in which the Commission's orders carried out the mandate of the court in regards to the use of an interstate rate and an interstate rate—or I mean an interstate rate and an intrastate rate in combination to defeat interstate commerce rates.

[fol. 1814] My next exhibit is No. 47, and consists of eight pages.

Examiner Stiles: It will be No. 47.

(Exhibit No. 47, Witness Bruce, was marked for identification.)

The Witness: This is a statement showing the trend of traffic, car supply, revenues, operating expenses, for the United States and the Southern Region for the year 1942 and four months in 1943. I am not going to burden the Examiner or the record by making an explanation, excepting that I am willing to be cross examined on it.

Mr. Reynolds: Let me ask for information, is this a complete copy of the Bureau of Economics Association of American Railways, of something they got out, or is it excerpts from something they got out, or what is it?

The Witness: It is excerpts from it. If you will look on the last page, you will see the authority, Bureau of Economics, Association of American Railways, publication entitled Railroad Data, published by the Eastern Railroad Presidents' Conference, a publication of the Bureau of Statistics, Interstate Commerce Commission.

Mr. Reynolds: Mr. Examiner, I don't think it is proper to put things of this sort in exhibit form. I have no access to these Bureau of Economics Association of American

Railways publications. I don't even know what documents he is talking about.

[fol. 1815] Mr. Oliver: Mr. Examiner, I notice on page 8 of the tendered exhibit "Bureau of Economics, Association of American Railways publication entitled Railroad Data, published by Eastern Railroad Presidents' Conference, and publications of the Bureau of Statistics, Interstate Commerce Commission." We have no way of knowing what it covers.

Examiner Stiles: It is a compilation from various sources, is that correct?

The Witness: It is a compilation from various sources, and it was made in the form of a statement that I was going to read in the record.

Examiner Stiles: In other words, you would present this as your oral testimony?

The Witness: Yes sir.

Mr. Oliver: You mean this is your testimony?

The Witness: Which I have made in exhibit form, due to the fact I anticipated you were going to make the very objections that you are making right now.

Mr. Reynolds: Do you know of these statements contained in this proposed exhibit of your own knowledge?

The Witness: I have prepared this myself, it is my—that is from compilations. I have used the same language; I have used tables.

Mr. Reynolds: I submit, Mr. Examiner, that if the witness undertook to testify to the statements contained in this [fol. 1816] compilation, his testimony would be objectionable on the ground that he is undertaking to testify about things of which he knows nothing, and that he just simply has gone around to different compilations and gotten out a whole lot of figures and is undertaking to testify about them. Now testimony of that sort I think is clearly objectionable.

Mr. Oliver: I don't understand him yet. The witness says it is his testimony. I don't understand whether it is quotations from these several publications.

The Witness: Read the authority and you will inform yourself.

Mr. Reynolds: As I understand it is just a summary of stuff taken from three or four publications which are referred to on the bottom of page 8. I submit a witness can't

testify to things that he takes from publications, and doesn't know anything about.

The Witness: How do you know that? I'm willing to stand cross examination on anything that you ask me about this thing, whether I know anything about it or not.

Examiner Stiles: I am going to reserve my ruling on your objection until I see if he can stand cross examination on the statements that are made in there. Now you may proceed, Mr. Bruce.

The Witness: I happen to have my authority with me. Volume of traffic, freight traffic in 1942 was greater——

[fol. 1817] Examiner Stiles: Now, Mr. Bruce——

The Witness: Do you want me to read it?

Examiner Stiles: No. Have you any further testimony to offer?

The Witness: All right.

Examiner Stiles: Proceed with your other testimony. I said I would reserve my ruling on that until you are cross examined. If you can satisfy the Examiner that you are testifying from your own knowledge, why I will rule accordingly. Does that complete your testimony, Mr. Bruce?

The Witness: That completes my testimony.

Examiner Stiles: All right, respondents may cross examine.

Cross-examination.

By Mr. Reynolds:

Q. Please refer to page 2 of your exhibit No. 47 that has been offered for identification.

A. All right.

Q. And tell me what you mean by the statement "The railroads in 1942 handled nearly 90 per cent of the increase over 1941 in total domestic freight movement and 75 per cent of the total increase in passenger travel." First, I want to know what that means.

A. The railroads in 1942 handled nearly 90 per cent of the increase over 1941 in total domestic freight movement and 75 per cent",—That means, Mr. Counsel, that the coastal service as far as vessels is concerned is practically eliminated.

[fol. 1818] Q. How do you know that?

A. I know that; and through the fact that we have a port here in Alabama, and we know of the port shipping, what it is, and I also have appeared in cases, and I have appeared probably in more cases than you have before the Maritime Commission, and before the Commission. I have knowledge of traffic, and my qualifications when I started to testify denotes that.

Q. What does it mean; what does your statement mean?

A. I'm telling you what it means. It means the railroads, of the five mediums of transportation which are regulated by the Commission, have handled 90 per cent of the increase over 1941 in total domestic freight. Domestic freight means the freight handled within this country.

Mr. Reynolds: That language doesn't mean anything to me. I don't understand it.

Examiner Stiles: Well, as the Examiner understands it there was a certain increase in total domestic freight movement. Of that increase the railroads handled 90 per cent, and other forms of transportation handled the other ten per cent of it.

Mr. Reynolds: Mr. Bruce, how do you know the railroads handled 90 per cent?

Examiner Stiles: Is that what it means, Mr. Bruce?

The Witness: Yes sir. Through the fact that the Association of American Railroads, Bureau of Railway Eco-[fol. 1819] nomics in a review of railway operations in 1942, which is your own figures, that you submit to the Bureau of Economics at Washington, D. C. issued this publication that I got that information from.

Mr. Reynolds: Let me see it.

Mr. Oliver: Let us see where that information is contained in that publication.

The Witness: Do I have to exhibit my source of information to counsel?

Examiner Stiles: Yes.

The Witness: First I will read it in the record. Page number 16 of the pamphlet, which I have already identified. "The railroads in 1942 handled nearly 90 per cent of the increase over 1941 in total domestic freight movement, and 75 per cent of the total increase in passenger travel."

By Mr. Reynolds:

Q. Now, the statement on the top of that page, "about 40 per cent of the sleeping cars and 15 per cent of the coaches are now being continuously used for the movement of armed forces. Freight cars have been materially increased in number, while passenger cars have appreciably decreased in number." Where did you get that information on that?

A. Where is that, what page?

Q. It is on page two, the first complete paragraph there on page 2.

A. 40 per cent of the sleeping cars and 15 per cent of the [fol. 1820] coaches are now being used. On page 10 of the pamphlet,—including nonpassenger carrying cars, and so forth and so on.

Q. I beg your pardon; I didn't understand you.

A. What?

Q. I didn't understand you.

A. On page 10 of the pamphlet which I have in my hand, which is identified in the record, Review of Railway Operations by the Association of American Railways, Bureau of Railway Economics.

Q. Let's hear what it says.

A. "About 40 per cent of the sleeping cars and 15 per cent of the coaches are now being continuously used for the movement of armed forces."

Q. All right, the next sentence. "Freight cars have been materially increased" and so forth.

A. That is in the same paragraph.

Q. Let's hear what it says. How could it possibly be true, Mr. Bruce, that passenger cars have appreciably decreased in number? How could that possibly be?

A. Because you have not constructed any cars at all; because you have retired a lot of cars.

Q. Where do you find anything to substantiate that?

A. Just a minute. I have got a table here. "Number of passenger carrying cars owned by the railroads of Class I and the Pullman Company, exclusive of dining and lounge."

[fol. 1821] Q. What are you reading from now?

A. I am reading from a reproduction from this "what-you-call-it", and I'll give you the page number.

Q. Let's see what the book says; I want to see what the book says.

A. Page No. 29, "Railway passenger traffic in terms of passenger miles broke all records." No, that's not it. It is on page No. 9, "The number of passenger carrying cars owned by railways of Class I and the Pullman Company, exclusive of lounges", and so forth and so on.

Q. Let's have the whole thing. Exclusive of what?

A. Well, this is where I start with the explanation. You are going to the tail end.

Q. I want to know what the book says. I understand all of your information has been taken from the book. Will you tell me what the book says to support the statement that freight cars have been materially increased in number, while passenger cars have been appreciably decreased in number?

A. Table 3, page 9, I had it before me all the time. I will read it out of my own copy now, but I have identified it. "Railway ownership of freight cars during the three years to October 1, 1942 show a net increase of 92,690 cars, or 5.6 per cent. However, the number of serviceable cars increased by 241,562, or 16.7 per cent." There is a table above there, named Table 3, total railroad owned freight [fol. 1822] cars, October 1, 1939, 1,643,898, and October 1, 1942, 1,736,588. Serviceable October 1, 1939, 194,890.

Q. You need not read all that. What I am interested in particularly is your statement that passenger cars have appreciably decreased in number. Where can you find anything to substantiate that?

A. I will give you the table. "Number of passenger carrying cars owned by railroads of Class I and Pullman Company, exclusive of dining and lounge cars, baggage, mail and express cars as of December 31, 1939 and January 1, 1942 is shown as coach combination, December 31, 1939, 20,825".

Q. Let me interrupt you if I may. There is nothing in there that says——

A. Wait a minute.

Q. —that passenger cars have appreciably decreased in number, is there?

A. Yes, there is.

Q. Go ahead.

A. If you will not interrupt me, I will give you all the information you want.

Q. Very well.

A. January 1, 1942, 20,329 cars, parlor cars on December 31, 1939, 900; January 1, 1942, 726; sleeping cars December 31, 1939, 6362 and January 1, 1942, 6625. "Others" 127 in 1939 and in 1941, 78, making a total on December [fol. 1823] 31, 1939 of 28,214. Now get that.

Q. All right, twenty-eight thousand and what?

A. And on January 1, 1942, 27,758.

Q. Twenty-seven what?

A. 27,758.

Q. There is nothing in that book that says passenger cars have appreciably decreased in number, is there?

A. I just read it a half dozen times then.

Q. You read me some figures which show a decrease as I figure it of 456 cars.

A. Including non passenger carrying cars, passenger train cars in service on December 31, 1939 total 45,479, but had decreased to 44,956 cars at the beginning of 1942.

Q. What is the difference?

A. The sleeping cars had increased in number, but all other classes of passenger equipment, including coaches, had been reduced.

Q. I haven't yet found anything in that book, any statement that passenger cars have appreciably decreased in number. I am asking you to show me where that is stated there, and you haven't done it. That is your own language that you put in there yourself.

A. Yes, and the exact figures are from the book.

Examiner Stiles: He used his own language, but based it on the figures from the book, as I understand it.

[fol. 1824] By Mr. Reynolds:

Q. Look on page 6, under the heading "Volume of Traffic" on your exhibit. "Opinions differ considerable" and so forth. Where did you get that statement, and whose statement is it, particularly at the beginning of the second paragraph, "I hold the opinion" and so forth. Who is "I" there?

A. I, that is me.

Mr. Reynolds: That is objectionable, Mr. Examiner.

The Witness: I have adopted the statement as my opinion there.

Mr. Reynolds: This witness hasn't given us precisely what he finds in some authentic publication.

The Witness: Well I——

Mr. Reynolds: Wait a minute. What he has done is to read a lot of books that we don't know what they are.

The Witness: Now, listen, I object to that. I've had enough out of you already, and I want to go ahead. I tell you I've stood plenty from you.

Mr. Reynolds: I'm going to say what I started out to say. He has read these books. I don't know what they are.

The Witness: You wouldn't know what they are if you read them.

Mr. Reynolds: Maybe not. That's what I think happened in the preparation of this exhibit. But anyway the witness has read the books and then drawn his own con- [fol. 1825] clusion from the facts stated there, and he has incorporated his conclusions in this exhibit. That is clearly objectionable. He is testifying to something that he got out of some books, he has drawn his own conclusions from facts stated in those books.

Examiner Stiles: If you want the authority for the statements that he has made, you have a right to ask it. But if you mean to say that the witness can't say when he has the figures before him that this is a decrease of a certain amount, the figures show a decrease; of course he can state that.

Mr. Reynolds: I think he can say that they show a decrease, but I understood from what the witness said that he was practically copying from—that the language contained in the exhibit was practically a copy of what was contained in the book.

Examiner Stiles: I understood him to say that in many instances he has used the language of the book, and in other instances he used his own language.

Mr. Reynolds: We don't know when he is doing one, and when he is doing the other.

Mr. Burkett: Mr. Examiner, if I might point out on page 36 of that book that has been introduced here in this hear-

ing, in the next to the last paragraph it practically quotes the same thing as is on this exhibit.

Mr. Reynolds: I'll tell you what I am willing to do now——

[fol. 1826] Mr. Burkett: That is as I see it.

Mr. Reynolds: If Mr. Bruce will submit copies of the book, whatever it is, and indicate the parts he relies on, that will be all right with us. But a lot of this is argumentative "I hold the opinion", this, that and the other.

Examiner Stiles: Well, as a rate expert he has a right to express his opinion.

Mr. Reynolds: He hasn't a right to argue, though, in an exhibit, Mr. Examiner, and that is an argument.

Mr. Oliver: Mr. Examiner, Mr. Bruce apparently relies on the publication to which he has referred here—you mean I can't look at it?

The Witness: It is my data.

Mr. Oliver: I suggest that the solution of the thing would be to put in the book itself, and indicate the pages and parts of it on which he relies in compliance with the Commission's rules. I do think that the exhibit in the shape in which it is now prepared is certainly objectionable. We can't tell what it is. It is a conglomeration of figures here, supposedly taken from——

Examiner Stiles: It is objectionable unless he is prepared to give you the authority for each of these statements that he makes which are statistical in nature.

The Witness: I am going to ask that——

Mr. Reynolds: A lot of it is argumentative. Let me [fol. 1827] call your attention to this: "It seems probable" on page 4; "that more than one-half of the increase was due to troop movements, men traveling while on military or naval furlough, and the like, while the remaining portion of the increase may be credited to more extensive utilization of rail service by civilians." Now that is just a guess, and an argument combined.

The Witness: It is a guess of your association. I want to read exactly the way the paragraph reads. This is on page 6.

Mr. Reynolds: Page 4.

Mr. Oliver: Off the record for just a moment.

Examiner Stiles: Suspend the record.

(Discussion was had off the record.)

The Witness: I will submit it in the record, and I will ask that one correction be made, and that is in the interest of getting through with this case.

Examiner Stiles: Now, let's see, you are going to submit this booklet that has been referred to. Let that be identified as Exhibit No. 48.

(Exhibit No. 48, Witness Bruce, was marked for identification.)

The Witness: I also wish to submit a sheet, "Railroad Data" under date of June 4, 1936, Eastern Railroads Presidents' Conference, and captioned, page 27——

Mr. Oliver: May I see that, please?

[fol. 1828] The Witness: On page 6, in the last paragraph thereof, I will ask that the——

Examiner Stiles: Just a moment. You offer this as an exhibit?

The Witness: Yes sir.

Mr. Oliver: Mr. Examiner, I don't want to be hypercritical about this thing, but that publication has no more weight and no more relevancy in this proceeding than the daily newspaper. It is not an official publication in any way by anybody. It shows on its face.

The Witness: Every figure shown in that sheet is contained in the exhibits, and in my exhibit No.——

Examiner Stiles: Mr. Bruce, I will have to sustain the objection unless you wish to withdraw your offer of this. I say I will have to sustain the objection to this paper, "Railroad Data", unless you wish to withdraw the offer.

The Witness: No, I don't want to withdraw it.

Examiner Stiles: Let it be identified as Exhibit No. 49, and the objection to it is sustained.

(Exhibit No. 49, Witness Bruce, was marked for identification, and rejected.)

The Witness: Now, Mr. Examiner, I have made reference to the Bureau of Statistics, Interstate Commerce Commission publication. That puts me back on my exhibit No. 40, and I have got to go back into Sheet M 100.

[fol. 1829] Examiner Stiles: As I understand, some of your statistical data in Exhibit 47 is taken from your Exhibit 40?

The Witness: Yes sir, and I will submit in evidence now Sheet No. M 100, showing the operating revenues and expenses of Class I steam railroads in the United States for four months ending with April 1943 and 1942, and I am ready at this time to back up the figures in my exhibit No. 47. Now ask me anything that you want to. I have got it here in this record.

Mr. Oliver: Are you going to furnish copies of that?

The Witness: I will furnish the Commission with a copy of this.

Examiner Stiles: Just a moment. You are offering that as an exhibit?

The Witness: Yes sir.

Examiner Stiles: Let the reporter mark it as Exhibit No. 50. This will be identified as Exhibit No. 50.

(Exhibit No. 50, Witness Bruce, was marked for identification.)

Examiner Stiles: Now——

The Witness: Just a minute. I wish to offer Statement M 150, which is a statement showing the operating revenues, operating expenses, selected items, for large steam railroads in the United States for four months ending April 1943 and 1942, and the attached sheets,—which are one sheet printed on both sides.

[fol. 1830] Examiner Stiles: Let that be identified as Exhibit No. 51.

(Exhibit No. 51, Witness Bruce, was marked for identification.)

Mr. Oliver: I understand you refuse to furnish copies of that?

The Witness: No, I will request the Commission to furnish me with copies for you, and I will gladly forward them to you.

Mr. Oliver: In view of that, I waive copies.

The Witness: The same figures are shown in "Railroad Data". If you want to cross examine me, I have got it all marked for you, so you can ask me anything you want to about my Exhibit No. 47.

Mr. Reynolds: What is the status of 47 now, Mr. Examiner?

Examiner Stiles: That's for you to say.

Mr. Oliver: My suggestion was that——

Examiner Stiles: You have an objection on the ground that the statistical data which largely composed the exhibit had not been properly authenticated.

Mr. Reynolds: That's right.

Examiner Stiles: The witness has now furnished the original publications from which this data was taken, as I understand him, which have been offered as exhibits. Do you withdraw your objection to Exhibit 47?

[fol. 1831] Mr. Reynolds: Not entirely, but I am willing that it be received in evidence, in so far as the facts stated therein can be verified from the basic data that Mr. Bruce has submitted.

The Witness: You can ask me if you want to.

Mr. Reynolds: I mean in so far as it contains any data that can be verified from subsequent exhibits.

Examiner Stiles: If the exhibit is admitted, it will be in evidence.

Mr. Reynolds: I don't mind any factual data being considered, but I do object to the other being considered. Consequently, I do not withdraw the objection.

The Witness: I am going to ask that counsel point out one particular instance in my Exhibit No. 47 that I can't substantiate by proper authority.

Mr. Reynolds: I haven't had any opportunity to study it, but what I don't like about it is particularly the things that I have referred to heretofore, for instance, "Passenger cars have appreciably decreased in number." Now while we were talking here I made a computation, and the decrease in passenger cars, according to the figures submitted by Mr. Bruce, was 1.6 per cent,—one and six-tenths of one per cent. In other words, so far as these figures are concerned, 28,214——

The Witness: These are your own figures.

Mr. Reynolds: —the number in service on December 31, [fol. 1832] 1939, and 27,758 being the number in service on January 1, 1942, I don't object to that. But I do object to these statements all through here, in which the witness undertakes to draw conclusions and argue.

The Witness: Do you want to read it yourself? Would you believe it if you read it yourself?

Mr. Reynolds: I don't question your figures if you have taken it from the book.

The Witness: Then what are you questioning about?

Mr. Reynolds: Questioning your statements concerning it, and arguments about it.

Mr. Oliver: May I make one short statement, and I am through. My suggestion was that I understood that Mr. Bruce relied on the facts contained in the publication to which he made reference, and which was later offered I believe as Exhibit 48. Now since that, my suggestic was that inasmuch as the facts relied on were contained in that publication, that he file the publication, and I assumed with the idea he was going to withdraw 47. Since that he has made the statement that every fact contained in Exhibit 47——

The Witness: No.

Mr. Oliver: —was contained either in the Bureau of Railway Economics publication or the exhibit which was introduced or offered as Exhibit 50. Now, if that is so, I——

Examiner Stiles: And some in his Exhibit 40.

[fol. 1833] Mr. Oliver: I beg your pardon.

Examiner Stiles: And some of the facts were in his exhibit 40.

Mr. Oliver: 40?

The Witness: Yes sir.

Mr. Oliver: Well now, with all of the facts in, why argue about 47? That is the point I don't get. If all of the facts are contained in the other exhibits, why put in or attempt to put in Exhibit 47, which is argumentative certainly in many spots? And if every fact contained in this tendered Exhibit 47——

Examiner Stiles: Then he could copy this in his brief, instead.

Mr. Oliver: —Mr. Bruce can make reference to them in his brief.

The Witness: I'll tell you, Mr. Examiner, I have been denied the right to explain exhibits here today on several occasions, due to the fact that I willingly went ahead to save time and did not go further with an explanation. If you will remember, throughout this proceeding I permitted these people to put in selected items from exhibits, and what not. I permitted them to put in hearsay evidence, and what not, and I have not objected.

I think on this particular exhibit, which is a resume and review of the traffic operations of 1942, which is gotten up, [fol. 1834] and which I have used the exact figures on,

which are published by the Association of American Railroads, which every one of these respondents are members of, and which are further substantiated by the records of the Commission, and it is put in readable form, I think I should be permitted to have my Exhibit No. 47 in. I am willing to stand cross-examination on it.

Mr. Oliver: In justice to the Examiner, I feel I should say for the record that counsel has not been denied the right so far as I have observed to explain the exhibits.

The Witness: I am denied the right by objections; and in the interest of cooperation I have surrendered my right to explain exhibits.

Mr. Oliver: If I may finish my statement, the Examiner hasn't denied counsel the right——

The Witness: I didn't say the Examiner had denied it.

Mr. Oliver: —to explain his exhibits. And the only objection I have ever made to what you call an explanation of the exhibit was to reading from the exhibit, just putting it in the transcript, and putting it in as an exhibit too.

The Witness: You had a witness yesterday that consumed practically two hours of the Commission's time, explaining his exhibit that had eighteen pages or more.

Mr. Oliver: Well, I don't care to argue the question.

Examiner Stiles: What is the attitude of the respondents [fol. 1835] now on this Exhibit 47?

Mr. Reynolds: I think we have said enough on the record to give everybody a clear idea of what it is. I withdraw the objection to it.

Mr. Oliver: I think I have got an objection pending. I withdraw mine.

The Witness: Thank you, gentlemen. We have wasted a lot of time on this.

Mr. Oliver: I don't know that I have.

Examiner Stiles: Is there any further cross-examination of the witness?

Mr. Oliver: I have no questions.

Mr. Reynolds: Nether have I.

Examiner Stiles: Do you tender your exhibits, Mr. Bruce?

Mr. Bruce: I tender my exhibits. I have forgotten the numbers.

Examiner Stiles: Exhibits 39 to 51, inclusive, with the exception of Exhibit No. 41 are received in evidence.

(Exhibits 39 to 51, inclusive, with the exception of No. 41, Witness Bruce, were received in evidence.)

Examiner Stiles: That completes your presentation, does it, Mr. Bruce?

Mr. Bruce: It completes my case, Mr. Examiner. I want to thank you for your cooperation. Off the record.

(Discussion was had off the record.)

[fol. 1836] Examiner Stiles: Have the respondents any further evidence in rebuttal?

Mr. Reynolds: Are you going to put in anything?

Mr. Burkett: Off the record.

Examiner Stiles: Suspend the record.

(Discussion was had off the record.)

Mr. Burkett: Inasmuch as the matters before the Commission in this proceeding have been thoroughly covered by other witnesses, I see no reason for burdening the record with any cumulative evidence or testimony or exhibits.

Mr. Reynolds: May we have say five minutes in which to determine whether or not we will have any rebuttal?

Examiner Stiles: We will have a five minutes recess.

(A short recess was taken.)

Mr. Oliver: Mr. Examiner, we have no rebuttal testimony.

Mr. Bruce: May I make a short statement? In regards to the statement that I made that I hadn't had the opportunity of explaining my exhibits in some instances, I don't want to leave the impression that Mr. Examiner had anything to do whatsoever with keeping me from getting a full explanation of my exhibits in. What I meant was that because of objection of counsel I refrained from making certain explanations that I might have made.

Examiner Stiles: Do the parties wish to file briefs?

Mr. Oliver: Yes, we do, Mr. Examiner.

[fols. 1837-1838] Mr. Bruce: Yes sir.

Examiner Stiles: Off the record.

(Discussion was had off the record.)

Examiner Stiles: Briefs will be due on August 16, 1943. All briefs will be due on the same date. A proposed report will be issued.

The hearing is closed.

(Whereupon at 1:15 o'clock p.m. on Wednesday, June 30th, 1943, the hearing in the above entitled matter was closed.)

[fol. 1839]

Alabama Passenger Fares
I.C.C. Docket No. 28963
Exhibit No. 2—Witness: Aiken

Southern Railway System

Examples of possible reductions of INTERSTATE fares for tickets good for transportation in coaches only by purchasing to the point nearest the State Line at which trains are regularly scheduled to stop and rebuying therefrom to INTERSTATE destinations.

Item			
1. Anniston, Ala. to Columbus, Miss.	(2.2¢)		$ 4.11
Anniston, Ala. to Fern Bank, Ala.	(1.65¢)	$2.80	
Fern Bank, Ala. to Columbus, Miss.	(2.2¢)	44	3.24
Saving			$ 0.87
2. Anniston, Ala. to Meridian, Miss.	(2.2¢)		$ 4.84
Anniston, Ala. to York, Ala.	(1.65¢)	$3.25	
York, Ala. to Meridian, Miss.	(2.2¢)	62	3.87
Saving			$ 0.97
3. Anniston, Ala. to New Orleans, La.	(2.2¢)		$ 9.31
Anniston, Ala. to York, Ala.	(1.65¢)	$3.25	
York, Ala. to New Orleans, La.	(2.2¢)	5.10	8.35
Saving			$ 0.96
4. Attalla, Ala. to New Orleans, La.	(2.2¢)		$ 9.09
Attalla, Ala. to York, Ala.	(2.65¢)	$3.05	
York, Ala. to New Orleans, La.	(2.2¢)	5.10	8.15
Saving			$ 0.94
5. Birmingham, Ala. to Atlanta, Ga.	(2.2¢)		$ 3.67
Birmingham, Ala. to Heflin, Ala.	(1.65¢)	$1.40	
Heflin, Ala. to Atlanta, Ga.	(2.2¢)	1.87	3.27
Saving			$ 0.40
6. Birmingham, Ala. to Chattanooga, Tenn.	(2.2¢)		$ 3.19
Birmingham, Ala. to Valley Head, Ala.	(1.65¢)	$1.70	
Valley Head, Ala. to Chattanooga, Tenn.	(2.2¢)	92	2.62
Saving			$ 0.57
7. Birmingham, Ala. to Cincinnati, Ohio	(2.2¢)		$10.74
Birmingham, Ala. to Valley Head, Ala.	(1.65¢)	$1.70	
Valley Head, Ala. to Cincinnati, Ohio	(2.2¢)	8.47	10.17
Saving			$ 0.57

[fol. 1840]

8. Birmingham, Ala. to Knoxville, Tenn.	(2.2¢)		$ 5.65
Birmingham, Ala. to Valley Head, Ala.	(1.65¢)	$1.70	
Valley Head, Ala. to Knoxville, Tenn.	(2.2¢)	3.38	5.08
Saving			$ 0.57

Item			
9. Birmingham, Ala. to Meridian, Miss.	(2.2¢)		$ 3.41
Birmingham, Ala. to York, Ala.	(1.65¢)	$2.15	
York, Ala. to Meridian, Miss.	(2.2¢)	.62	2.77
Saving			$ 0.64
10. Birmingham, Ala. to New Orleans, La.	(2.2¢)		$ 7.88
Birmingham, Ala. to York, Ala.	(1.65¢)	$2.15	
York, Ala. to New Orleans, La.	(2.2¢)	5.10	7.25
Saving			$ 0.63
11. Chattanooga, Tenn. to New Orleans, La.	(2.2¢)		$11.04
Chattanooga, Tenn. to Valley Head, Ala.	(2.2¢)	$0.92	
Valley Head, Ala. to York, Ala.	(1.65¢)	3.80	
York, Ala. to New Orleans, La.	(2.2¢)	5.10	9.82
Saving			$ 1.22
12. Fayette, Ala. to Atlanta, Ga.	(2.2¢)		$ 5.43
Fayette, Ala. to Heflin, Ala.	(1.65¢)	$2.70	
Heflin, Ala. to Atlanta, Ga.	(2.2¢)	1.87	4.57
Saving			$ 0.86
13. Huntsville, Ala. to Memphis, Tenn.	(2.2¢)		$ 4.77
Huntsville, Ala. to Cherokee, Ala.	(1.65¢)	$1.50	
Cherokee, Ala. to Memphis, Tenn.	(2.2¢)	2.86	4.36
Saving			$ 0.41
14. Meridian, Miss. to Cincinnati, Ohio	(2.2¢)		$14.12
Meridian, Miss. to York, Ala.	(2.2¢)	$0.62	
York, Ala. to Valley Head, Ala.	(1.65¢)	3.80	
Valley Head, Ala. to Cincinnati, Ohio	(2.2¢)	8.47	12.89
Saving			$ 1.23

[fol. 1841]

15. Mobile, Ala. to Chattanooga, Tenn.	(2.2¢)		$ 9.06
Mobile, Ala. to Valley Head, Ala.	(1.65¢)	$6.25	
Valley Head, Ala. to Chattanooga, Tenn.	(2.2¢)	.92	7.17
Saving			$ 1.89
16. Mobile, Ala. to Cincinnati, Ohio	(2.2¢)		$16.61
Mobile, Ala. to Valley Head, Ala.	(1.65¢)	$6.25	
Valley Head, Ala. to Cincinnati, Ohio	(2.2¢)	8.47	14.72
Saving			$ 1.89
17. Parrish, Ala. to Chattanooga, Tenn.	(2.2¢)		$ 4.11
Parrish, Ala. to Valley Head, Ala.	(1.65¢)	$2.55	
Valley Head, Ala. to Chattanooga, Tenn.	(2.2¢)	.92	3.47
Saving			$ 0.64
18. Selma, Ala. to Rome, Ga.	(2.2¢)		$ 4.33
Selma, Ala. to Tecumseh, Ala.	(1.65¢)	$2.85	
Tecumseh, Ala. to Rome, Ga.	(2.2¢)	.55	3.40
Saving			$ 0.93
19. Selma, Ala. to Chattanooga, Tenn.	(2.2¢)		$ 5.50
Selma, Ala. to Valley Head, Ala.	(1.65¢)	$3.60	
Valley Head, Ala. to Chattanooga, Tenn.	(2.2¢)	.92	4.52
Saving			$ 0.98
20. Selma, Ala. to Cincinnati, Ohio	(2.2¢)		$13.05
Selma, Ala. to Valley Head, Ala.	(1.65¢)	$3.60	
Valley Head, Ala. to Cincinnati, Ohio	(2.2¢)	8.47	12.07
Saving			$ 0.98

Item			
21. Sheffield, Ala. to Chattanooga, Tenn.	(2.2¢)		$ 3.67
Sheffield, Ala. to Stevenson, Ala.	(1.65¢)	$2.15	
Stevenson, Ala. to Chattanooga, Tenn.	(2.2¢)	.88	3.03
Saving			$ 0.64
22 Sheffield, Ala. to Washington, D. C.	(2.2¢)		$17.34
Sheffield, Ala. to Stevenson, Ala.	(1.65¢)	$2.15	
Stevenson, Ala. to Washington, D. C.	(2.2¢)	14.56	16.71
Saving			$ 0.63
[fol. 1842]			
23. Stevenson, Ala. to Memphis, Tenn.	(2.2¢)		$ 6.05
Stevenson, Ala. to Cherokee, Ala.	(1.65¢)	$2.50	
Cherokee, Ala. to Memphis, Tenn.	(2.2¢)	2.86	5.36
Saving			$ 0.69
24. Tuscaloosa, Ala. to Chattanooga, Tenn.	(2.2¢)		$ 4.44
Tuscaloosa, Ala. to Valley Head, Ala.	(1.65¢)	$2.65	
Valley Head, Ala. to Chattanooga, Tenn.	(2.2¢)	.92	3.57
Saving			$ 0.87
25. Tuscaloosa, Ala. to Cincinnati, Ohio	(2.2¢)		$11.99
Tuscaloosa, Ala. to Valley Head, Ala.	(1.65¢)	$2.65	
Valley Head, Ala. to Cincinnati, Ohio	(2.2¢)	8.47	11.12
Saving			$ 0.87
26. Tuscaloosa, Ala. to Atlanta, Ga.	(2.2¢)		$ 4.95
Tuscaloosa, Ala. to Heflin, Ala.	(1.65¢)	$2.40	
Heflin, Ala. to Atlanta, Ga.	(2.2¢)	1.87	4.27
Saving			$ 0.68
27. Valley Head, Ala. to Meridian, Miss.	(2.2¢)		$ 5.65
Valley Head, Ala. to York, Ala.	(1.65¢)	$3.80	
York, Ala. to Meridian, Miss.	(2.2¢)	.62	4.42
Saving			$ 1.23
28. Valley Head, Ala. to New Orleans, La.	(2.2¢)		$10.15
Valley Head, Ala. to York, Ala.	(1.65¢)	$3.80	
York, Ala. to New Orleans, La.	(2.2¢)	5.10	8.90
Saving			$ 1.25
29. York, Ala. to Atlanta, Ga.	(2.2¢)		$ 6.49
York, Ala. to Heflin, Ala.	(1.65¢)	$3.60	
Heflin, Ala. to Atlanta, Ga.	(2.2¢)	1.87	5.47
Saving			$ 1.02
30. York, Ala. to Chattanooga, Tenn.	(2.2¢)		$ 5.98
York, Ala. to Valley Head, Ala.	(1.65¢)	$3.80	
Valley Head, Ala. to Chattanooga, Tenn.	(2.2¢)	.92	4.72
Saving			$ 1.26

EXHIBIT No. 3—Witness: Aiken

[fol. 1843]

Alabama Passenger Fares
I.C.C. Docket No. 28963
Southern Railway System

Examples showing the fares paid for transportation good in coaches only by INTERSTATE passengers, also paid by INTRASTATE passengers traveling equal distance between points in Alabama.

Item		Distance Miles	One-Way Coach Fare	Difference in Cost in Favor Intrastate Passenger
1. Anniston, Ala. to Columbus, Miss.	(2.2¢)	186	$4.11	
Anniston, Ala. to Sheffield, Ala.	(1.65¢)	193	3.30	$0.81
2. Birmingham, Ala. to Cordele, Ga.	(2.2¢)	268	5.90	
Birmingham, Ala. to Mobile, Ala.	(1.65¢)	266	4.45	1.45
3. Huntsville, Ala. to Knoxville, Tenn.	(2.2¢)	209	4.62	
Huntsville, Ala. to Montgomery, Ala.	(1.65¢)	208	3.45	1.17
4. Birmingham, Ala. to Meridian, Miss.	(2.2¢)	154	3.41	
Springville, Ala. to York, Ala.	(1.65¢)	155	2.60	0.81
5. Tuscaloosa, Ala. to Laurel, Miss.	(2.2¢)	154	3.44	
Tuscaloosa, Ala. to Valley Head, Ala.	(1.65¢)	159	2.65	0.79
6. Selma, Ala. to Rome, Ga.	(2.2¢)	196	4.33	
Selma, Ala. to Decatur, Ala.	(1.65¢)	188	3.20	1.13
7. Birmingham, Ala. to Columbus, Miss.	(2.2¢)	122	2.71	
Birmingham, Ala. to York, Ala.	(1.65¢)	127	2.15	0.56
8. Anniston, Ala. to Griffin, Ga.	(2.2¢)	146	3.23	
Anniston, Ala. to Akron, Ala.	(1.65¢)	147	2.50	0.73
9. Decatur, Ala. to Chattanooga, Tenn.	(2.2¢)	122	2.71	
Sheffield, Ala. to Stevenson, Ala.	(1.65¢)	127	2.15	0.56

[fol. 1844] EXHIBIT 4—STEWART

Hugh White, President; H. F. Lee, Associate Commissioner; W. C. Harrison, Associate Commissioner; Lamar Wiley, Secretary; I. F. McDonnell Chief, Bureau of Utilities; J. G. Bruce, Chief, Bureau of Transportation

Alabama Public Service Commission, Montgomery

Docket 8618

Investigation & Suspension Proceeding:

In Re: Increased Intrastate Railway Passenger Fares and Charges from, to and Between Points in Alabama

THE ALABAMA GREAT SOUTHERN RAILROAD, et al.,
Respondents

Appearances:

L. L. Oliver, % Southern Railway Company, Washington, D. C., appearing for Alabama Lines whose tariffs are under suspension.

T. J. Stewart, General Passenger Agent, Savannah, Georgia, appearing for Central of Georgia Railway.

W. W. Wharton, Assistant General Passenger Agent, Jacksonville, Florida, appearing for Atlantic Coast Line.

John B. Patterson, Traveling Passenger Agent, P. O. Box 788, Montgomery, Alabama, appearing for Western Railway of Alabama.

W. H. Amerine, Commercial Agent, P. O. Box 1121, Montgomery, Alabama, appearing for Seaboard Air Line Railway Passenger Traffic Manager.

J. A. Bliss, Office of Price Administration, Washington, D. C. appearing for Leon Henderson, Price Administrator, and James F. Byrnes, Director of Economic Stabilization.

J. Mac Jones, Bell Building, Montgomery, Alabama, appearing for Leon Henderson, Price Administrator, Office of Price Administration.

[fol. 1845] Report and Order of the Commission

On or prior to November 5, 1942, the respondents filed tariffs with the Commission to make effective an increased coach fare of 2.2¢ per mile in Alabama upon all steam railroads.

Upon its own motion the Commission suspended the operation of the proposed increased fares until January 30, 1943, and at the same time entered an order of investigation of the lawfulness and reasonableness of the proposed increased fares.

After due notice to the respondents and to the public, the case was heard by the Commission at its office in Montgomery, Ala. on November 24, 1942.

Appearances were entered at the hearing as shown in the heading hereof.

Prior to 1941, the respondents had maintained a coach fare of 1.5¢ per mile on intrastate transportation for several years by voluntary act of the respondents.

In the latter part of 1941, the railroads had very substantially increased operating expense on account of wage increases to a large number of their employees which became effective during that year.

Following this increase of operating expense, respondents and other railroads of the United States filed a general petition with the Interstate Commerce Commission in the proceeding known as Ex Parte 148 asking for a

substantial increase generally on freight and a 10% increase in fares for passenger transportation. The Interstate Commission granted such petition in so far as the increase of fares for passenger transportation was concerned. In the early part of 1942, respondents filed petition with the Alabama Commission and with other State Commissions in Southern Territory for authority to make such 10% increase effective intrastate in Alabama and in other Southern states. This Commission granted that petition, thereby raising the coach fare to 1.65¢ per mile. Subsequently the Federal Government has imposed a tax upon such transportation fares which increased the amount the passenger had to pay for such transportation.

On August 1, 1942, the Interstate Commerce Commission granted a petition filed by respondents and other steam railroads operating in Southern Territory to increase the coach fare of 1.65¢ per mile to a fare of 2.2¢ [fol. 1846] per mile on interstate transportation in Southern Territory. Following such increase of such fares of respondents interstate to the charge of 2.2¢ per mile, respondents filed with this Commission tariffs to make such rate effective on intrastate transportation of passengers between points in Alabama. As above stated these tariffs were suspended by the Commission upon its own motion and this investigation was ordered.

The first increase above referred to of such fares from 1.5¢ to 1.65¢ per mile was predicated chiefly both before the Interstate Commission and the Alabama Commission upon the substantial increased operating expenses due to the increase of wages of respondents employees as above stated. Meantime the revenues of respondents as shown by the record, both from freight traffic and passenger traffic have increased to an extent which is without precedent in the history of railroad transportation in the United States.

The fact that the railroads have received such large increase of revenue is a matter of common knowledge and for the purposes of this report and order we do not deem it necessary to set up the figures here.

When the Commission inquired of counsel for respondents for the basis on which they asked for the approval of such increased fares, the answer given was that to an extent it was for revenue but that respondents were attempt-

ing to put the intrastate fares on the interstate basis and eliminate any possibility of discrimination.

In so far as the revenue feature of the present case is concerned, the respondents failed to show that they needed the additional revenue for the purpose of obtaining enough revenue to continue essential services. In fact, the record shows abundantly that the total revenue now received by respondents is ample to take care of their operating expenses and in addition furnish reasonable net revenue to respondents.

At the time of the hearing and even more now, since rationing of gasoline has been made effective throughout Alabama and Southern Territory, it is a matter of common knowledge that the passenger traffic of the railroads in Alabama has grown to such an extent that it is very seldom when any railroad can furnish seating capacity for [fol. 1847] the transportation of passengers who travel in coaches between points in Alabama. Almost without exception respondents' passenger coaches between points in Alabama are filled not only to the extent of the seating capacity but to the extent of standing room in the aisles and in the vestibules of the cars between cars.

It is a reasonable inference that interstate passengers on these trains which come into Alabama from other states would have a better chance of getting a seat in the coach. Under the passenger traffic load now these interstate trains which carry most of our intrastate passengers will come into Alabama with all or practically all of the coach seats taken up when they come into this state. Therefore, when intrastate passengers in Alabama get on the train to ride between points in Alabama, the chances are that they will occupy standing places in the aisles and in the vestibules of such cars in making a trip from one point in Alabama to another in Alabama. Under such conditions the plea of discrimination against interstate commerce and against persons riding such trains in interstate commerce could not be justified.

In connection with this plea of discrimination and undue prejudice against the interstate coach passengers, it is proper to call to the attention of respondents that when the Interstate Commerce Commission on October 1, 1942, refused to suspend respondents' tariffs to make such coach fare of 2.2¢ per mile effective on interstate coach traffic, the Commission said that in permitting such fares to become

effective without prior investigation did not constitute approval thereof.

Before respondents can successfully show that denial of such increased fares would constitute unreasonable discrimination or undue prejudice to interstate commerce, the respondents have the burden of showing that such increased fare of 2.2¢ per mile is just and reasonable.

The respondents in this case have not even undertaken to discharge the legal requirements of sustaining such burden.

Upon consideration of the evidence, the Commission finds respondents have not justified the proposed increased coach fares.

[fol. 1848] It is, therefore, ordered by the commission, that respondents' said tariffs filed with the Commission to make the proposed increased fares and charges effective intrastate in Alabama be and they are hereby cancelled and that respondents' said proposal to make such increased fares and charges effective on intrastate passenger traffic in Alabama, be and it is hereby denied.

Done at office in Montgomery, Alabama, on this 15th day of January, 1943.

Alabama Public Service Commission, Hugh White, President; H. F. Lee, Associate Commissioner; W. C. Harrison, Associate Commissioner.

Attest: A True Copy.
Lamar Wiley, Secretary.

[fol. 1849]

EXHIBIT 5—Stewart

Central of Georgia Railway Company
M. P. Callaway, Trustee
Passenger Traffic Department

Examples of Present Interstate and Intrastate Fares

Exhibit No. 1

	Miles	Diff. Miles	Coach Fare	Diff. Fare
Birmingham-Opelika	122.7		$2.05	
Columbus-Sterrett	123.9	1.2	2.75	$.70
Birmingham-Sylacauga	51.5		.88	
Columbus-Camp Hill	49.5	2.0	1.10	.22
Birmingham-Goodwater	67.8		1.15	
Columbus-Alexander City	71.5	3.7	1.58	.43
Birmingham-Phenix City	149.3		2.50	
Birmingham-Columbus	151.4	2.1	3.34	.84
Birmingham-Phenix City			2.50	
Phenix City-Columbus			.11	
			2.61	.73
Montgomery-Eufaula	80.3		1.40	
Cuthbert-Mitchell	80.4	0.1	1.80	.40
Columbus-Union Springs	54.7		1.21	
Union Springs-Brantley	55.7	1.0	.94	.27
Columbus-Montgomery	95.3		2.13	
Girard-Montgomery	93.8	1.5	1.60	.53
Columbus-Girard			.11	
Girard-Montgomery			1.60	
			1.71	.42

[fol. 1850]

EXHIBIT 6—Stewart

Central of Georgia Railway Company
M. P. Callaway, Trustee
Passenger Traffic Department

Examples of Present Interstate and Intrastate Fares

Exhibit No. 2

	Miles	Diff. Miles	Coach Fare	Diff. Fare
Opelika, Ala. to Troy, Ala.				
Via CofGa Ry. (interstate)	113.2		$2.53	
Via WofA Montgomery, ACL	117.4	4.2	1.95	$.58
Birmingham to Hurtsboro				
Via CofGa Ry. (interstate)	186.3		4.11	
Via L&N Montgomery, SAL	154.2	32.1	2.65	1.46
Birmingham to Seale, Ala.				
Via CofGa Ry. (interstate)	171.2		3.78	
Via L&N Montgomery, CofGa	173.2	2.0	2.90	.88

[fol. 1851]

EXHIBIT 7—Stewart

Central of Georgia Railway Company
M. P. Callaway, Trustee
Passenger Traffic Department

Examples of Present Interstate and Intrastate Fares

Exhibit No. 3

	Miles	Diff. Miles	Coach Fare	Diff. Fare
Birmingham to Inverness				
Via CofGa (interstate)	215.1		$4.77	
Via L&N Montgomery, ACL Troy, CofGa	170.2	44.9	2.94	$1.83
Birmingham to Fort Mitchell				
Via CofGa (interstate)	161.5		3.60	
Via L&N Montgomery, CofGa	183.2	21.7	3.14	.46

Schedules as follows:

Lv. Birmingham	4:50 PM CT	CofGa
Ar. Columbus	10:25 PM ET	"
Lv. Columbus	7:45 AM ET	"
Ar. Inverness	8:50 AM CT	"

Lv. Birmingham	8:35 PM CT	L&N
Ar. Montgomery	10:33 PM CT	"
Lv. Montgomery	7:20 AM CT	ACL
Ar. Troy	8:59 AM CT	"
Lv. Troy	4:33 PM CT	CofGa
Ar. Inverness	5:40 PM CT	"

Lv. Birmingham	4:50 PM CT	CofGa
Ar. Columbus	10:25 PM ET	"
Lv. Columbus	7:45 AM ET	"
Ar. Ft. Mitchell	7:07 AM CT	"

Lv. Birmingham	7:55 AM CT	L&N
Ar. Montgomery	10:20 AM CT	"
Lv. Montgomery	5:05 PM CT	CofGa
Ar. Ft. Mitchell	7:49 PM CT	"

[fol. 1852]

I.C.C. Docket No. 28963

EXHIBIT No. 8—Witness: Makin

Seaboard Air Line Railway Company

L. R. Powell, Jr., and Henry W. Anderson, Receivers

Statement Showing Manner in Which the Lower Basis of Fares (For Travel in Coaches) Intrastate in Alabama Makes It Possible for Passengers To Defeat the Through Published Interstate Fares

From	To			
Borden Springs, Ala.	Memphis, Tenn.	Through Interstate fare (2.2¢ per mile) Via Seaboard Ry., to Birmingham thence SLSF Ry.		$7.63
Borden Springs, Ala.	Birmingham, Ala.	Intrastate fare (1.65¢ per mile) Via Seaboard Ry.	$1.55	
Birmingham, Ala.	Memphis, Tenn.	Interstate fare (2.2¢ per mile) Via SLSF Ry.	5.61	7.16
		Possible saving		$0.47

[fol. 1853]

Seaboard Air Line Railway Company

L. R. Powell, Jr., and Henry W. Anderson, Receivers

Statement Showing Manner in Which the Lower Basis of Passenger Fares (For Travel in Coaches) Intrastate in Alabama Results in Direct Discrimination Against Interstate Passengers (Traveling via Different Routes between Same Cities or Towns)

The Seaboard Railway, in connection with the Louisville & Nashville Railroad, publishes fares from Piedmont, Ala., to Hurtsboro, Ala., over an *intrastate* route wholly within the State of Alabama, viz: Seaboard Railway from Piedmont to Birmingham, Ala., L&N to Montgomery thence Seaboard Railway to Hurtsboro. The Seaboard Railway has in the past published approximately the same fares from Piedmont to Hurtsboro over the *interstate* route via Seaboard Railway to Atlanta, Ga., thence Central of Georgia Railway, which route is one mile less than the intrastate route through Birmingham, Ala.

From	To	Interstate Fare (2.2¢ Per Mile)	Intrastate Fare (1.65¢ per Mile)
Piedmont, Ala.	Hurtsboro, Ala. (235.9 miles)	$5.21	
Piedmont, Ala.	Hurtsboro, Ala. (236.9 miles)	.....	$4.05

Difference in favor of the intrastate route—$1.16

[fol. 1854]

Seaboard Air Line Railway Company
L. R. Powell, Jr., and Henry W. Anderson, Receivers

Statement Showing Manner in Which the Lower Basis of Fares
(For Travel in Coaches)
Intrastate in Alabama Results in Direct Discrimination
Against Interstate Passengers
(Traveling on the same train)

Seaboard Railway Train No. 10, operated from Birmingham, Ala., to Richmond Va., carries interstate passengers from Birmingham, Ala., to Greenwood, S. C. The same train carries intrastate passengers from Birmingham, Ala., to Piedmont, Ala.

From	To	Distance	Interstate Fare (2.2¢ Per Mile)	Intrastate Fare (1.65¢ Per Mile)
Birmingham, Ala.	Cedartown, Ga.	106.3	$2.35	.....
Birmingham, Ala.	Borden Springs, Ala.	91.6	.....	$1.55

The intrastate passenger travels on the same train as the interstate passenger, is furnished with the same accommodations; the intrastate passenger travels 14.7 miles less than the interstate passenger, but his fare is 80¢ lower. The interstate passenger pays $2.02 for that portion of his journey between Birmingham and Borden Springs, while the intrastate passenger pays $1.55—a difference of 47¢ in favor of the intrastate passenger.

[fol. 1855] EXHIBIT No. 9

I. C. C. Docket No. 28963—Witness Lyneh

Atlantic Coast Line Railroad Company

Passenger Traffic Department

Statement Showing Manner in Which the Lower Basis of Fares
(For travel in Coaches)
Intrastate in Alabama Makes It Possible for Passengers
to Defeat the Through Published Interstate Fares

	One-way Interstate Coach Fare		One-way Coach Fares		Difference in Fares
		Thomasville-Dothan	$2.02	Interstate	
		Dothan-Montgomery	2.00	Intrastate	
Thomasville, Ga. to Montgomery, Ala.	$4.60		$4.02		$0.64
		Bainbridge-Dothan	$1.25	Interstate	
Bainbridge, Ga. to Birmingham, Ala. via ACL Montg. & L&N	$6.02	Dothan-Birmingham	3.65	Intrastate	
			$4.90		$1.12
		Thomasville-Montg.	$4.66	Interstate	
Thomasville, Ga. to Memphis, Tenn. ACL Montg. L&N Bham Frisco Lines	$12.39	Montg.-Birmingham	1.65	Intrastate	
		Birmingham-Memphis	5.61	Interstate	
			$11.92		$0.47
		Thomasville-Montg.	$4.66	Interstate	
Thomasville, Ga. to New Orleans, La. ACL-Montgomery & L&N	$11.55	Montgomery-Mobile	2.95	Intrastate	
		Mobile-New Orleans	3.08	Interstate	
			$10.69		$0.86

[fol. 1856] EXHIBIT No. 10

I. C. C. Docket No. 28963—Witness Lynch

Atlantic Coast Line Railroad Company

Passenger Traffic Department

Statement Showing Manner in Which the Lower Basis of Fares (For Travel in Coaches) Intrastate in Alabama Results in Direct Discrimination Against Interstate Passengers (Traveling on the same train)

Atlantic Coast Line Railroad Company Trains Nos. 57–58 and Nos. 180–189 operate between Savannah, Ga. and Montgomery, Ala. and carry interstate passengers between points in Georgia, to destinations in Alabama, and vice-versa. The same trains carry intrastate passengers between points in Alabama.

From	To	Distance	Interstate Fare (2.2¢ Per mile)	Intrastate Fare (1.65¢ per mile)
Thomasville, Ga.	Ozark, Ala.	118.8	$2.64	.....
Dothan, Ala.	Montgomery, Ala.	119.0	.....	$2.00

The intrastate passenger travels on the same train as the interstate passenger, is furnished the same accommodations, both travel approximately the same distance, but the intrastate passenger pays 64¢ less than the interstate passenger.

[fol. 1857] EXHIBIT No. 11

I. C. C. Docket 28963—Witness: J. A. Higgins

The Western Railway of Alabama

Statement Showing Instances Where Intrastate Coach Fares for the Same or Shorter Distances are Less than Interstate Coach Fares

From	To		Miles	One-way coach fares	Difference
Montgomery, Ala.	Atlanta, Ga.	Inter	175	$3.85	
Montgomery, Ala.	Mobile, Ala.	Intra	178	2.95	$0.90
Birmingham, Ala.	Nashville, Tenn.	Inter	205	4.55	
Birmingham, Ala.	Mobile, Ala.	Intra	222	4.45	0.10
Opelika, Ala.	Atlanta, Ga.	Inter	109	2.42	
Opelika, Ala.	Birmingham, Ala.	Intra	123	2.05	0.37
Montgomery, Ala.	Atlanta, Ga.	Inter	175	3.85	
Montgomery, Ala.	Decatur, Ala.	Intra	183	3.05	0.80
Opelika, Ala.	Atlanta, Ga.	Inter	109	2.42	
Montgomery, Ala.	Dothan, Ala.	Intra	119	2.00	0.42

Atlanta, Ga., June 23, 1943.
Files: 5882-A
18045-A

[fol. 1858] EXHIBIT No. 12

I. C. C. Docket 28963—Witness: J. A. Higgins

The Western Railway of Alabama

Following Figures Illustrate How Passengers Can Buy Intrastate Coach Tickets Between Points in Alabama and Rebuy, Thus Defeating the Through Interstate Fares:

	One-way Interstate coach fare		One-way coach fares		Difference in fare
Atlanta, Ga.		Atlanta to Lanett	$1.94	Inter	
to Montg., Ala.	$3.85	Lanett to Montg.	1.50	Intra	$0.41
			$3.44		
Atlanta, Ga.		Atlanta to Lanett	1.94	Inter	
to Dothan, Ala.	6.12	Lanett to Dothan	3.45	Intra	
			$5.39		0.73
Atlanta, Ga.		Atlanta to Lanett	1.94	Inter	
to Mobile, Ala.	7.81	Lanett to Mobile	4.45	Intra	
			$6.39		1.42
Atlanta, Ga.		Atlanta to Lanett	1.94	Inter	
to N. O., La.	10.89	Lanett to Grand Bay	4.90	Intra	
		Grand Bay to N. O.	2.53	Inter	
			$9.37		1.52
LaGrange, Ga.		LaGrange to Lanett	0.40	Inter	
to Birmg., Ala.	3.56	Lanett to Birmg.	2.45	Intra	
			$2.85		0.71
Opelika, Ala.		Opelika to Grand Bay	4.50	Intra	
to N. O., La.	8.51	Grand Bay to N. O.	2.53	Inter	
			$7.03		1.48
Opelika, Ala.		Opelika to Veto	3.90	Intra	
to Nash., Tenn.	7.26	Veto to Nash.	2.09	Inter	
			$5.99		1.27
Montg., Ala.		Montg. to Lanett	$1.50	Intra	
to LaGrange, Ga.	2.31	Lanett to LaGrange	0.40	Inter	
			$1.90		0.41
Montg., Ala.		Montg. to Phenix City	$1.55	Intra	
to Cols., Ga.	2.13	Phenix C. to Cols., Ga.	0.11	Inter	
			$1.66		0.47
Cols., Ga.		Cols. to Phenix City	$ .11	Inter	
to Mobile, Ala.	6.09	Phenix C. to Mobile	4.50	Intra	
			$4.61		1.48

Atlanta, Ga., June 23, 1943
Files: 5882-A, 18045-A.

[fol. 1859]

EXHIBIT No. 13

I. C. C. Docket 28963—Witness: J. A. Higgins

The Western Railway of Alabama

Following Figures Illustrate How Passengers Can Buy Intrastate Coach Tickets Between Points in Alabama and Rebuy, Thus Defeating the Through Interstate Coach Fares:

	One-way Interstate coach fare		One-way coach fares		Difference in fare
Atlanta, Ga. to Montg., Ala.	$3.85	Atlanta to Opelika	$2.42	Inter	
		Opelika to Montgomery	1.10	Intra	
			$3.52		$0.33
Atlanta, Ga. to Dothan, Ala.	6.12	Atlanta to Opelika	$2.42	Inter	
		Opelika to Dothan	3.10	Intra	
			$5.52		0.60
Atlanta, Ga. to Mobile, Ala.	7.81	Atlanta to Opelika	$2.42	Inter	
		Opelika to Mobile	4.05	Intra	
			$6.47		1.34
Atlanta, Ga. to N. O., La.	10.89	Atlanta to Opelika	$2.42	Inter	
		Opelika to Mobile	4.05	Intra	
		Mobile to N. O.	3.08	Inter	
			$9.55		1.34
LaGrange, Ga. to Birmg., Ala.	3.56	LaGrange to Opelika	$ .84	Inter	
		Opelika to Birmg.	2.05	Intra	
			$2.89		0.67
Opelika, Ala. to N. O., La.	8.51	Opelika to Mobile	$4.05	Intra	
		Mobile to N. Orleans	3.08	Inter	
			$7.13		1.38
Opelika, Ala. to Nash., Tenn.	7.26	Opelika to Decatur	$3.45	Intra	
		Decatur to Nashville	2.68	Inter	
			$6.13		1.13
Montg., Ala. to LaGrange, Ga.	2.31	Montg. to Opelika	$1.10	Intra	
		Opelika to LaGrange	0.84	Inter	
			$1.94		0.37
Montg., Ala. to Col., Ga.	2.13	Montg. to Opelika	$1.10	Intra	
		Opelika to Columbus	.66	Inter	
			$1.76		0.37
Col., Ga. to Mobile, Ala.	6.09	Columbus to Opelika	$ .66	Inter	
		Opelika to Mobile	4.05	Intra	
			$4.71		1.38

Atlanta, Ga., June 23, 1943.
Files: 5882-A, 18045-A.

[fol. 1860]

EXHIBIT No. 14

I. C. C. Docket 28963—Witness: J. A. Higgins

The Western Railway of Alabama

Following Figures Illustrate How Passengers Can Buy Intrastate Coach Tickets Between Points in Alabama and Georgia, and Between West Point, Ga. and Lanett, Ala., Thus Defeating the Through Interstate Fares:

	One-way Interstate coach fare		One-way coach fares		Difference in fare
Atlanta, Ga.		Atlanta to West Point	1.50	Intra	
to Montgomery,		West Point to Lanett	.11	Inter	
Alabama	$3.85	Lanett to Montgomery	1.50	Intra	
			$3.11		$0.74
Atlanta, Ga.		Atlanta to West Point	1.50	Intra	
to Dothan, Ala.	6.12	West Point to Lanett	.11	Inter	
		Lanett to Dothan	3.45	Intra	
			$5.06		1.06
Atlanta, Ga.		Atlanta to West Point	1.50	Intra	
to Mobile, Ala.	7.81	West Point to Lanett	.11	Inter	
		Lanett to Mobile	4.45	Intra	
			$6.06		1.75
Atlanta, Ga.		Atlanta to West Point	1.50	Intra	
to New Orleans,		West Point to Lanett	.11	Inter	
Louisiana	10.89	Lanett to Grand Bay	4.90	Intra	
		Grand Bay to N. O.	2.53	Inter	
			$9.04		1.85
LaGrange, Ga.		LaGrange to West Pt.	.28	Intra	
to Birmingham,		West Point to Lanett	.11	Inter	
Alabama	3.56	Lanett to Birmingham	2.45	Intra	
			$2.84		0.72
Opelika, Ala.		Opelika to Grand Bay	4.50	Intra	
to New Orleans,		Grand Bay to N. O.	2.53	Inter	
Louisiana.	8.51				
			$7.03		1.48
Opelika, Ala.		Opelika to Veto	3.90	Intra	
to Nashville,		Veto to Nash.	2.09	Inter	
Tennessee	7.26				
			$5.99		1.27
Montgomery, Ala.		Montgomery to Lanett	1.50	Intra	
to LaGrange, Ga.	2.31	Lanett to West Point	.11	Inter	
		West Point to LaGrange	.28	Intra	
			$1.89		0.42
Montgomery, Ala.		Montgomery to Phenix C.	1.55	Intra	
to Columbus, Ga.	2.13	Phenix City to Cols.	.11	Inter	
			$1.66		0.47
Columbus, Ga. to		Cols. to Phenix City	.11	Inter	
Mobile, Ala.	6.09	Phenix City to Mobile	4.50	Intra	
			$4.61		1.48

Atlanta, Ga., June 23, 1943 (Files: 5882-A, 18045-A).

[fol. 1861]

EXHIBIT No. 15

Alabama Passenger Fares

I.C.C. Docket No. 28963—Witness: P. E. Geil

Gulf, Mobile & Ohio Railroad Company

Statement of Present Basic Passenger Fares Between Points on G. M. & O. R. R. (In Cents per Mile)

	Coach		First Class	
	O.W.	R.T.	O.W.	R.T.
Alabama Intrastate Traffic	2.2	1.65	3.3	2.475
Interstate Traffic	2.2	1.98	3.3	2.75
Mississippi Intrastate Traffic	2.2	1.98	3.3	2.75

O.W.—One Way
R.T.—Round Trip

[fol. 1862]

EXHIBIT No. 16

Alabama Passenger Fares

I.C.C. Docket No. 28963—Witness: P. E. Geil

Gulf, Mobile & Ohio Railroad Company

Examples of Advantage, Preference and Prejudice as Between Persons In Intrastate and Interstate Commerce in Alabama

	Miles	R.T. Coach Fare	Difference
Example 1:			
Columbus, Miss. to Montgomery, Ala.	167	$6.65	
Ethelville, Ala. to Montgomery, Ala.	153	5.06	$1.59
Example 2:			
Columbus, Miss. to Tuscaloosa, Ala.	60	$2.50	
Maplesville, Ala. to Tuscaloosa, Ala.	57	1.87	$0.63
Example 3:			
State Line, Miss. to Mobile, Ala.	63	$2.60	
Fruitdale, Ala. to Mobile, Ala.	55	1.82	$0.78
Example 4:			
Vinegar Bend, Ala. to Shubuta, Miss.	49	$2.00	
Vinegar Bend, Ala. to Mobile, Ala.	47	1.60	$0.40

[fol. 1863] [Stamp:] Received Aug. 12, 1943. Railroad Commission of Kentucky

EXHIBIT 17

Southern Railway System, Law Department

Washington, D. C., August 10, 1943.

I. C. C. Docket No. 28963—Alabama Intrastate Fares

Mr. W. P. Bartel, Secretary, Interstate Commerce Commission, Washington, D. C.

DEAR MR. BARTEL:

It has just come to my attention that there are errors in the figures appearing in lines 9 and 18, page 14 of Exhibit 17, introduced by Witness Tasin in the hearing in the above matter at Montgomery, Alabama on June 29, 1943. The indices of hourly compensation appearing on line 9 should be corrected so as to read as follows:

1937—109; 1938—118; 1939—116; 1940—116; 1941—124; 1942—135; average—138.

The effect upon line 18, however, is only of one percentage point, correct figures being:

1937—103; 1938—109; 1939—109; 1940—110; 1941—117; 1942—127; average—111.

I am sending copy of this letter to all parties of record.

Very truly yours, L. L. Oliver, Commerce Counsel.

cc—Examiner C. E. Stiles, Interstate Commerce Commission, Washington, D. C.

1864]

EXHIBIT No. 17

I. C. C. Docket No. 28963—Witness: Tassin

BEFORE THE
INTERSTATE COMMERCE COMMISSION
IN THE MATTER OF PASSENGER FARES AND CHARGES
FOR INTRASTATE TRAFFIC BETWEEN POINTS IN ALABAMA
FINDINGS AND DATA IN SUPPORT THEREOF

1865]

Had increase sought in intrastate fares and charges between points in Alabama been in effect between Dec. 1, 1942 and March 31, 1943, $250,166 additional would have been in the coffers of the fourteen railroads involved in this proceeding. Raised to a year's basis, the amount would be $750,498. For twelve months ended March 31, 1943, the amount would be $688,983. For twelve months ended February 28, 1943, the amount would be $654,255.

For many years past passenger operations of these railroads have been in the red. From 1936 to 1940, both inclusive, in a range from 27 to 33 millions of dollars deficit, the representative average deficit has been 31 millions. In 1941 there was a drop to 19 millions of dollars deficit. In 1942 there was an income of 32 millions. The average deficit for the seven year period (1936–42) was 20 millions of dollars.

In order to overcome that average deficit of 20 millions of dollars per year by revenue derived from passengers alone (Account 102) the average volume of such revenues would have to be raised by 31%. If other passenger train revenue (Account 108) were included, the required increase would be 30%. If total passenger train revenue were included (Accounts 102–109) an increase of 22% would be required. On basis of total passenger revenue, an increase of 21% would be required.

The increase sought in Alabama calculated to yield about 750 thousands a year as long as present volume holds, represents 3¾ percent of the average annual deficit of 20 millions of dollars—a burden presently being borne by Interstate and Intrastate in such states as have allowed the increase.

Passenger carrying cars (1936–40) produced about 15 cents per mile; baggage, express, mail and milk cars 23 cents. For the average of 7 years the former had risen to 20 cents and the latter had remained at 23 cents.

The tax burden in 1941 was over twice and in 1942 about five times what it was in 1936. As apportioned to passenger, the ratios were 1.2 and 3.4 respectively.

Rates of employee compensation in 1941 had increased by 18% over 1936 and in 1942 by 28%.

The average price of materials and supplies for the Southern Region in December, 1941 had increased by 24% over October, 1936.

1866]

Despite the increase in volume of passenger business in 1941 and especially since; that passenger is still in the position of being a burden upon freight is evidenced by the fact the freight operating ratio for these roads (1936–40) is 67%, while for passenger it is 127%. For the average of 7 years (1936–42) it is 64% as compared with 106%. On basis including taxes and rents, freight is 76% as compared with 142%. For the average of the 7 year period it is 76% as compared with 121%.

The average rate of return earned by these fourteen roads for the average of 22 years (1921–42) was only 3.24%, which about coincides with Southern Region as a whole. Weighted in proportion to mileage, both in total and in Alabama, the return is reduced to 3.11%. This means that over that extended period of fat and lean years gross would have had to be increased by 13% to realize a net of 5¾% on investment in railway property (including cash and material and supplies) used in transportation service.

For the twelve first class roads here involved, Exhibit A–11 introduced in Ex Parte 148 at the instance of the Commission itself, shows that as of January 1, 1940, an increased capital outlay of 12% would be required to give the country these facilities were they not already in existence.

Index of Supporting Statements

Loss in passenger revenue reflected by what would have accrued had increase sought in intrastate fares been in effect in the State of Alabama during the years ended February 28 and March 31, 1943, respectively, and the four months ended March 31, 1943 ..... Page 4
Net Railway Operating Income or Deficit—Passenger ..... " 5
Percent by which (102) passenger revenue would have to be raised in order to wipe out net railway operating deficit from passenger operations ..... " 6
Percent by which (102) passenger and (108) other passenger train revenues would have to be raised in order to wipe out net railway operating deficit from passenger operations ..... " 7
Percent by which total passenger train revenue, excluding switching (Accounts 102–109, inc.) would have to be raised in order to wipe out net railway operating deficit from passenger operations ..... " 8
Percent by which total passenger revenue would have to be raised in order to wipe out net railway operating deficit from passenger operations ..... " 9
(102) Passenger and (108) other passenger train revenues per passenger carrying car mile (cents) ..... " 10

1867]

(103) Baggage, (106) Mail, (107) Express and (109) Milk revenue per car mile (Cents) ..... Page 11
Total railway tax accruals (Accounts 532) ..... " 12
Railway Tax Accruals—Passenger ..... " 13
Increase in hourly compensation (cents)—all employees ..... " 14
Index of average unit prices of railway material and supplies, including fuel ..... " 15
Railway operating ratios (railway operating expenses divided by railway operating revenues) ..... " 16
Railway outgo ratios (railway operating expenses, taxes and net rents divided by railway operating revenues) ..... " 17

867

Index of Supporting Statements—Continued

15. Average annual rate of return 1921–1942, inclusive—Railroads operating in State of Alabama . . . . . Page 18
16. Average annual rate of return, 1921–1942, inclusive—Class I Railroads of Southern Region . . . . . " 19
17. Average rates of return, 1921–42, weighted in proportion to average miles of road operated—Railroads operating in State of Alabama . . . . . " 20
18. Fact and extent of revenue need, average year of 22 (1921–1942, inclusive) weighted in proportion to miles of road operated at close of year 1942—Railroads operating in State of Alabama . . . . . " 21
19. Elements of value of property used in common carrier service as of January 1, 1940—Railroads operating in State of Alabama. " 22

[fol. 1868]

Loss in Passenger Revenue Reflected by What Would Have Accrued Had Increase Sought in Intrastate Fares Been in Effect in the State of Alabama During the Periods Shown Below

Road	Loss in Intrastate Revenues		
	Year Ended 2/28/43	Year Ended 3/31/43	4 Mos. Ended 3/31/43
Alabama Great Southern	$43,418	$45,216	$16,867
Alabama, Tennessee & Northern	13,196	13,960	5,573
Atlanta, Birmingham & Coast	7,345	7,952	2,600
Atlantic Coast Line	23,946	25,940	10,042
Central of Georgia	50,432	51,838	16,317
Gulf, Mobile & Ohio	7,942	8,199	3,159
Illinois Central	515	522	183
Louisville & Nashville	361,769	382,456	141,992
Nashville, Chattanooga & St. Louis	246	244	78
St. Louis-San Francisco	1,611	1,681	503
Seaboard Air Line	7,164	7,323	2,363
Southern	113,554	119,413	41,662
Tennessee, Alabama & Georgia	1,050	1,091	395
Western of Alabama	22,067	23,148	8,432
Total	$654,255	$688,983	$250,166
Annual approximation	.....	.....	$750,498

SOURCE: Furnished on request by Accounting Department of each railroad.

[fol. 1869]

Net Railway Operating Income or Deficit—Passenger

(As required to be computed by Interstate Commerce Commission and annually reported thereto)

Railroads Operating in State of Alabama

Road	1936	1937	1938	1939	1940	1941	1942	Average
Alabama Great Southern	$448,904	$355,008	$517,617	$568,243	$585,759	$32,093 I	359,864	$306,917
Ala., Tenn. & Nor.	Not separated in Annual Report							
Atlanta, Bgham. & Coast	194,897	282,604	276,645	220,882	224,161	308,510	345,762	264,780
Atlantic Coast Line	2,790,052	2,492,414	3,518,586	4,291,109	4,194,042	1,200,663 I	4,446,553	2,005,759
Central of Georgia	1,453,501	1,532,499	1,817,508	1,699,567	1,879,644	1,190,126 I	389,128	1,311,960
Gulf, Mobile & Ohio	1,006,978	994,335	1,047,561	1,107,153	1,308,317	1,180,424	592,468	1,083,891
Illinois Central	5,605,522	2,952,394	3,641,717	3,864,562	4,604,410	4,377,460 I	130,959	3,559,301
Louisville & Nashville	5,429,064	5,887,764	6,556,946	6,404,436	6,815,661	4,915,654 I	2,069,686	4,848,548
Nash., Chatta. & St. L.	648,694	761,372	824,626	841,791	764,263	675,092 I	709,082	543,822
St. Louis-San Francisco	4,569,015	4,676,233	5,106,317	4,789,464	4,423,543	3,349,768 I	3,679,728	3,319,230
Seaboard Air Line	3,953,652	3,207,798	4,083,514	2,997,095	2,807,430	1,033,934 I	10,654,634	1,061,256
Southern	3,951,429	4,176,195	4,994,845	4,873,672	5,222,582	927,503 I	9,748,714	2,056,787
TA&G	Not separated in Annual Report							
West Ry. of Ala.	83,250	102,261	77,417	100,575	103,492	54,597 I	316,319	29,325
Total	$30,134,958	$27,420,877	$32,463,299	$31,758,549	$32,933,304	$19,246,424	$131,566,377	$20,341,576

I—Denotes Income.

SOURCE: Annual Reports to Interstate Commerce Commission.

[fol. 1870]

Percent by Which (102) Passenger Revenue Would Have to be Raised in Order to Wipe Out Net Railway Operating Deficit From Passenger Operations—Railroads Operating in State of Alabama

Road	1936	1937	1938	1939	1940	1941	1942	Average
Alabama Great Southern	71%	48%	83%	99%	90%	3%	Dec.	29%
Alabama, Tenn. & Northern				Not Available				
Atlanta, Birmingham & Coast	96%	146%	149%	113%	99%	95%	80%	105%
Atlantic Coast Line	41%	32%	51%	66%	53%	10%	Dec.	19%
Central of Georgia	103%	102%	150%	144%	141%	57%	"	68%
Gulf, Mobile & Ohio	144%	132%	170%	201%	246%	190%	44%	141%
Illinois Central	61%	30%	40%	44%	50%	38%	Dec.	32%
Louisville & Nashville	82%	82%	106%	107%	105%	55%	"	52%
Nashville, Chatta. & St. L.	58%	63%	78%	78%	66%	40%	"	32%
St. Louis & San Francisco	133%	124%	154%	149%	140%	68%	"	66%
Seaboard Air Line	85%	58%	83%	47%	37%	9%	"	11%
Southern	40%	40%	57%	56%	57%	7%	"	15%
T A & G				Not Available				
Western Ry. of Alabama	29%	33%	27%	36%	35%	14%	Dec.	7%
Total	67%	56%	75%	73%	69%	28%	"	31%

SOURCE: Computed from reports of the carriers to the Interstate Commerce Commission.

[fol. 1871]

Percent by Which (102) and (108) Other Passenger Train Revenues Would Have to be Raised in Order to Wipe Out the Net Railway Deficit From Passenger Operations—Railroads Operating in State of Alabama

Road	1936	1937	1938	1939	1940	1941	1942	Average
A G S	71	48	82	98	89	2	Dec.	28
A T & N				Not Available				
A B & C	95	112	146	112	98	82	80	98
A C L	40	31	49	63	52	10	Dec.	19
C of Ga	102	101	149	143	140	57	"	68
G M & O	143	132	169	200	245	190	43	141
Ill. Cent	60	29	39	43	49	37	Dec.	32
L & N	82	81	104	105	104	54	"	52
NC&St.L	57	62	77	76	64	39	"	31
St. L-SF	131	122	153	147	138	68	"	66
S A L	83	56	80	46	36	9	"	11
Southern	39	38	55	54	55	6	"	14
T A & G				Not Available				
W. Ry. of A	29	32	27	35	34	13	Dec.	7
Total	68	54	73	71	68	27	Dec.	30

SOURCE: Computed from reports of the carriers to the Interstate Commerce Commission.

[fol. 1872]

Percent by Which Total Passenger Train Revenue,* Excluding Switching, Would Have to be Rasied in Order to Wipe Out Net Railway Operating Deficit From Passenger Operations—Railroads Operating in State of Alabama

Road	1936	1937	1938	1939	1940	1941	1942	Average
A G S	46	33	54	62	58	2	Dec.	21
A T & N				Not Available				
A B & C	51	77	82	63	59	64	57	64
A C L	27	22	35	44	38	8	Dec.	14
Cent. of Ga.	59	60	85	80	82	38	"	45
G M & O	85	81	97	107	133	110	34	87
Ill. Cent.	41	21	28	30	35	28	Dec.	23
L & N	51	53	66	65	66	38	"	37
NC & St. L	30	33	40	39	34	24	"	19
St. L–SF	81	76	94	90	84	46	"	45
SAL	56	40	55	34	28	7	"	9
Southern	25	26	35	34	35	5	"	10
T A & G				Not Available				
W. Ry. of Ala.	20	23	19	24	24	10	Dec.	5
Total	43	37	48	47	46	20	Dec.	22

SOURCE: Computed from reports of the carriers to the Interstate Commerce Commission.

* Accounts: 102–109, inclusive.

[fol. 1873]

Percent by Which Total Passenger Revenue Would Have to be Raised in Order to Wipe Out Net Railway Operating Deficit From Passenger Operations—Railroads Operating in State of Alabama

Road	1936	1937	1938	1939	1940	1941	1942	Average
A G S	44	31	51	59	55	2	Dec.	20
A T & N				Not Available				
A B & C	47	82	84	60	56	64	57	63
A C L	26	21	33	42	36	9	Dec.	14
C of Ga	57	58	82	77	79	37	"	43
G M & O	84	78	95	106	131	107	33	85
Ill. Cent	39	20	26	28	32	26	Dec.	22
L & N	50	53	64	63	64	36	"	35
NC&St.L	29	32	38	38	33	23	"	19
St. L-SF	75	71	87	83	78	43	"	42
S A L	53	37	52	31	26	7	"	8
Southern	24	25	34	33	34	4	"	10
T A & G				Not Available				
W. Ry. of A	19	22	18	23	23	10	"	5
Total	41	35	46	44	43	19	"	21

SOURCE: Computed from reports of the carriers to the Interstate Commerce Commission.

[fol. 1874]

(102) Passenger and (108) Other Passenger Train Revenue per Passenger Carrying Car Mile (Cents)
Railroads Operating in State of Alabama

Road	1936	1937	1938	1939	1940	1941	1942	Average
A G S	14.40	16.25	13.96	13.49	15.39	27.44	39.86	22.15
A T & N				Not Available				
A B & C	9.63	12.53	9.27	9.78	10.30	14.98	17.71	12.23
A C L	14.87	16.05	15.33	13.84	15.10	20.08	34.71	19.70
C of Ga.	12.30	12.44	10.83	10.54	11.24	15.79	28.82	15.36
G M & O	13.14	14.29	12.13	10.99	10.64	13.96	25.68	14.48
Ill. Cent.	16.86	18.31	17.56	17.55	18.10	20.79	32.07	20.47
L & N	13.53	14.49	13.08	12.83	13.35	17.22	33.60	17.82
NC&StL	13.14	13.87	12.68	12.72	13.71	17.51	36.94	18.43
St. L–SF	13.22	13.46	12.49	12.23	12.70	17.54	35.50	17.76
S A L	14.45	15.89	14.94	16.90	18.58	23.04	41.27	22.97
Southern	15.17	16.08	14.98	14.99	15.63	21.14	42.61	21.21
T A & G	23.78	22.00	18.77	17.25	18.23	19.39	32.41	21.70
W Ry. of A.	17.10	18.35	17.12	16.86	16.83	20.64	46.09	23.26
Total	14.69	15.72	14.65	14.56	15.41	19.95	36.54	19.82

SOURCE: Computed from reports of the carriers to the Interstate Commerce Commission.

[fol. 1875]

(103) Baggage, (106) Mail, (107) Express, and (109) Milk Revenue per Car Mile (Cents)
Railroads Operating in State of Alabama

Road	1936	1937	1938	1939	1940	1941	1942	Average
A G S	23.31	23.23	27.02	26.73	23.66	25.44	29.66	25.63
A T & N				Not Available				
A B & C	18.08	17.68	15.33	14.35	17.52	18.66	19.53	17.21
A C L	19.41	18.47	17.48	17.39	16.74	18.21	19.80	18.24
C of Ga.	23.04	20.18	18.17	18.34	17.84	18.97	20.99	19.58
G M & O	26.72	24.95	25.88	26.09	24.27	26.76	28.24	26.04
Ill. Cent.	20.04	18.95	18.67	18.51	19.37	20.40	23.44	19.89
L & N	30.93	29.22	28.06	29.08	28.38	29.00	29.81	29.22
NC&St.L	31.20	28.21	26.88	27.66	26.85	26.71	30.61	28.28
St. L–SF	28.01	26.70	25.43	24.92	26.91	27.92	28.57	26.82
S A L	19.38	19.58	20.72	21.81	21.32	21.22	22.12	20.89
Southern	32.70	31.72	24.68	23.54	22.61	28.76	31.21	27.85
T A & G	31.85	32.29	30.99	31.15	31.19	31.43	31.76	31.52
W. Ry. of Ala.	33.72	31.52	30.68	31.10	30.36	29.09	28.64	30.52
Total	24.78	23.61	22.08	22.06	21.89	23.76	25.74	23.46

SOURCE: Computed from reports of the carriers to the Interstate Commerce Commission.

[fol. 1376]

Total Railway Tax Accruals (Account 532) Railroads Operating in State of Alabama

Road	1936	1937	1938	1939	1940	1941	1942	Average
A G S	$538,176	$673,845	$715,185	$882,224	$1,073,245	$1,899,050	$6,639,606	$1,774,333
A T & N	38,613	25,783	41,484	46,570	43,714	47,261	66,731	44,308
A B & C	219,889	262,852	269,434	273,986	276,312	404,020	595,326	328,831
A C L	4,465,000	4,825,000	4,625,000	4,390,000	4,550,000	7,650,000	27,900,000	8,343,571
C of Ga	1,137,601	1,052,802	1,331,733	1,351,817	1,441,266	1,628,110	2,508,296	1,493,089
G M & O	1,247,704	1,217,236	1,321,777	1,377,118	1,541,369	2,495,355	4,651,400	1,978,851
Ill. Cent	7,494,947	6,572,372	8,060,846	8,497,663	8,342,027	11,601,379	21,505,173	10,296,344
L & N	6,626,087	7,716,721	7,114,734	8,135,700	10,304,935	18,212,127	48,370,589	15,211,556
NC&St.L	541,497	877,159	921,860	934,296	1,100,371	1,855,540	5,047,943	1,611,238
St.L–SF	3,538,418	3,194,565	3,749,227	3,757,097	3,771,505	4,122,271	5,405,514	3,934,085
S A L	2,540,332	2,551,930	3,311,956	2,848,110	3,476,947	3,862,311	5,157,733	3,392,760
Southern	5,892,304	7,069,947	7,369,019	7,814,553	8,391,483	15,552,068	41,488,395	13,368,253
T A & G	37,770	23,769	34,159	54,477	80,723	80,424	105,664	59,569
W. Ry. of Ala	128,038	132,666	173,929	184,347	193,894	301,006	1,086,511	314,342
Total	$34,446,376	$36,196,647	$39,040,343	$40,547,958	$44,587,791	$69,709,922	$170,528,881	$62,151,131
Index	100	105	113	118	129	202	495	180

SOURCE: Reports of the carriers to the Interstate Commerce Commission.

[fol. 1877]

Railway Tax Accruals—Passenger Railroads Operating in State of Alabama

Road	1936	1937	1938	1939	1940	1941	1942	Average
A G S	$135,290	$113,560	$127,222	$134,081	$155,484	$150,467	$1,039,893	$265,142
A T & N				Not Separated				
A B & C	40,108	45,211	47,690	46,304	48,355	71,108	97,038	56,545
A C L	1,486,801	1,512,255	1,555,959	1,450,077	1,520,331	1,513,281	6,484,242	2,217,564
Cent. of Ga.	300,554	269,260	354,989	341,469	372,884	385,211	620,302	377,810
GM&O	168,090	156,648	189,758	180,297	205,190	209,505	193,398	186,127
Ill. Cent.	1,829,159	1,500,473	1,925,736	1,922,171	1,910,324	2,280,864	2,407,348	1,968,011
L. & N.	1,307,787	1,498,428	1,661,076	1,561,801	1,635,869	1,716,511	5,450,546	2,118,860
N. C. & St. L.	126,872	208,238	229,635	227,632	225,600	254,765	1,087,832	337,225
St. L.-S. F.	872,928	793,849	949,304	910,720	897,241	932,870	1,082,706	919,945
S. A. L.	796,884	764,561	1,011,636	878,760	1,067,405	1,090,559	1,537,924	1,021,104
Southern	1,400,676	1,840,445	1,930,708	1,810,427	1,961,963	1,926,381	8,912,325	2,826,132
T. A. & G.				Not Separated				
W. Ry. of Ala.	41,318	42,666	43,210	53,065	48,610	48,946	371,548	92,766
Total	$8,506,467	$8,745,594	$10,026,923	$9,516,804	$10,049,256	$10,580,468	$29,285,102	$12,387,231
Index	100	103	118	112	118	124	344	146

SOURCE: Reports of Carriers to the Interstate Commerce Commission.

[fol. 1878]

Indices of Hourly Compensation (Cents)—All Employees—1936=100

Railroads Operating in State of Alabama

Roads	1936	1937	1938	1939	1940	1941	1942	Average
A G S	100	104	113	115	115	121	138	124
A T & N	100	110	116	120	130	140	160	126
A B & C	100	99	102	106	109	118	138	111
A C L	100	103	108	112	116	123	134	115
C of Ga.	100	102	112	112	113	120	132	113
G M & O	100	144	118	116	116	124	135	138
L C R. R. Co.	100	103	109	108	108	112	121	109
L & N	100	103	116	109	109	114	124	110
NC&STL	100	104	112	110	111	115	125	118
St. L.-SF	100	103	108	109	109	110	125	110
S A L	100	103	108	109	111	135	132	116
Southern	100	102	110	108	109	115	126	111
T A & G	100	104	113	121	133	144	171	125
W Ry of A	100	102	108	111	114	117	126	112
Average	100	103	109	109	110	117	127	111

SOURCE: Annual Reports to I. C. C.

[fol. 1879]

Southern Region

Index of Average Unit Prices of Railway Material and Supplies, Including Fuel
October 1936 = 100

	Oct. 1, 1936	Jan. 1, 1937	Apr. 1, 1937	Oct. 1, 1937	Dec. 1, 1937	Jan. 1, 1938	Dec. 1, 1938	June 1, 1939	Dec. 1939	June 1940	Dec. 1940	June 1941	Dec. 1941
Forest products	100	106	110	108	107	102	99	101	111	110	131	132	148
Iron & Steel Products	100	108	119	121	122	120	112	112	117	113	114	119	122
Misc. Products	100	108	117	131	105	101	104	101	107	105	105	106	109
Total (excl. fuel)	100	108	116	1	114	111	107	106	113	110	115	119	124
Fuel (coal & Oil)	100	103	106	110	112	110	108	109	109	110	110	117	125
Total (incl. fuel)	100	106	113	114	113	111	107	107	111	110	114	118	124

Source: Data underlying Carriers' Exhibit No. A-36 (Witness J. H. Parmelee)
Page 9—Ex Parte No. 148 (Reopened).

[fol. 1880]

Freight and Passenger Operating Ratios Railroads Operating in State of Alabama

Roads	1936 Frt.	1936 Pass.	1937 Frt.	1937 Pass.	1938 Frt.	1938 Pass.	1939 Frt.	1939 Pass.	1940 Frt.	1940 Pass.	1941 Frt.	1941 Pass.	1942 Frt.	1942 Pass.	Average Frt.	Average Pass.
A G S RR	66	116	66	111	65	128	59	132	58	127	57	81	49	54	58	92
A T & N RR							Not Available									
A B & C RR	83	134	83	164	82	164	81	149	85	137	72	132	73	127	79	142
A C L RR	67	108	68	105	70	114	66	122	67	118	61	96	51	64	62	95
C of Ga. RR	73	138	77	139	76	158	76	154	74	154	64	118	61	77	70	123
G M & O RR	65	161	70	161	68	173	68	184	69	204	62	186	59	121	65	165
Ill. Cent. RR	67	128	69	112	66	115	67	118	69	121	66	115	64	93	66	112
L & N RR	65	130	68	134	67	143	65	142	65	144	58	119	56	72	62	115
NC& St. L. Ry.	78	125	80	125	72	126	70	128	70	124	65	113	62	70	69	107
St. L.-SF Ry.	70	157	73	155	77	165	73	162	70	158	65	127	62	71	69	127
S A L Ry.	70	136	70	125	74	134	73	119	72	113	69	98	61	60	68	97
Southern Ry.	62	112	65	109	62	115	60	116	61	118	58	94	55	57	60	93
T A & G							Not Available									
W Ry of A	84	108	84	107	80	102	76	104	73	107	69	96	59	48	72	85
Total	67	126	69	121	68	128	66	128	67	127	62	107	58	68	64	106

SOURCE: Reports of the Carriers to the Interstate Commerce Commission.

[fol. 1881]

Freight and Passenger Outgo Ratios Railroads—Operating in State of Alabama

Road	1936		1937		1938		1939		1940		1941		1942		Average	
	Frt.	Pass.	Frt.	Pass.	Frt.	Pass.	Frt.	Pass.	Frt.	Pass.	Frt.	Pass.	Frt.	Pass.	Frt.	Pass.
A G S RR	76	144	74	131	67	151	65	159	68	155	75	102	87	90	75	120
A T & N RR	Not Available															
A B & C RR	94	147	95	182	97	184	97	157	100	156	88	164	88	157	93	162
A C L RR	78	126	79	121	82	133	78	142	79	136	76	107	80	86	79	114
C of Ga. RR	80	157	83	158	84	182	83	179	81	179	71	137	69	94	77	143
G M & O RR	78	184	83	138	83	195	81	206	84	231	79	207	80	133	81	179
Ill. Cent. RR	77	139	79	120	76	126	76	128	77	132	76	126	80	100	78	122
L & N RR	70	150	74	153	74	164	72	163	73	164	71	136	84	93	75	135
NC & St. L. Ry	83	129	87	132	80	138	78	138	79	133	76	123	80	88	80	119
St. L-SF Ry	75	175	77	171	83	187	78	183	76	178	70	143	68	75	75	141
S A L Ry	78	151	78	137	83	152	81	131	81	126	78	107	70	68	77	108
Sou. Ry	71	124	76	124	74	133	70	132	71	134	72	104	77	78	73	110
T A & G Ry	Not Available															
W Ry. of Ala	89	119	87	122	86	118	82	123	80	123	81	110	84	77	84	105
Total	75	141	78	134	78	146	75	144	76	143	74	119	78	84	76	121

SOURCE: Reports of carriers to the Interstate Commerce Commission.

Average Annual Rate of Return—1921–1942, Inclusive

Railroads Operating in State of Alabama

Roads	Investment in Railway Property Used in Transportation Service, including Cash Materials and Supplies	Net Railway Operating Income	Rate of Return
Alabama Great Southern	$36,581,626	$1,626,028	4.44
Alabama, Tennessee & Northern	8,039,395	64,369	0.80
Atlanta, Birmingham & Coast	22,581,567	d 270,503	d1.20
Atlantic Coast Line	286,980,665	8,898,620	3.10
Central of Georgia	105,027,318	2,838,469	2.70
Gulf, Mobile & Ohio	102,157,262	2,879,194	2.82
Illinois Central	586,724,446	19,770,778	3.37
Louisville & Nashville	469,700,458	17,700,721	3.77
Nashville, Chatta. & St. Louis	99,179,924	2,445,499	2.47
St. Louis-San Francisco	424,309,155	12,750,084	3.00
Seaboard Air Line	287,163,810	6,944,690	2.42
Southern	612,860,440	22,888,182	3.73
Tennessee, Alabama & Georgia	1,373,071	41,830	3.05
Western Ry. of Alabama	9,743,352	296,258	3.04
Total	$3,052,422,489	$98,874,219	3.24

d Denote deficit.

SOURCE: Reports of the carriers to the Bureau of Railway Economics and to the Interstate Commerce Commission (beginning in 1936)

Southern Region

Revenues, Expenses and Net Income

Railways of Class I—Years 1921–1942

Year	Investment in Railway Property used in transportation service *a*	Total Operating Revenues	Total Operating Expenses	Taxes	Net Railway Operating Income		Net Income
					Amount	Rate of Return	
1921	$2,544,543,695	$684,727,318	$589,349,969	$30,058,104	$57,840,946	2.27%	$7,841,591
1922	2,591,156,704	711,489,119	554,924,589	37,636,117	109,666,782	4.23	55,791,992
1923	2,740,319,955	807,900,577	627,558,235	42,177,128	129,644,627	4.73	77,507,509
1924	2,848,043,577	787,949,317	594,875,149	44,982,899	142,445,074	5.00	86,311,303
1925	2,989,626,741	846,581,262	616,488,300	50,957,634	167,565,759	5.60	112,068,078
1926	3,155,883,365	874,464,159	646,031,708	53,857,054	163,046,381	5.17	105,154,742
1927	3,236,589,190	813,166,422	618,642,232	50,644,073	136,488,599	4.22	77,275,619
1928	3,292,527,033	771,[illegible]14,281	582,088,993	50,940,833	133,545,258	4.06	72,234,499
1929	3,324,161,166	767,324,856	579,047,334	51,147,375	132,634,559	3.99	73,039,468
1930	3,338,881,112	641,628,178	503,008,762	42,974,495	88,405,628	2.65	30,860,679
Avg. 1921–30	3,006,173,253	770,704,548	591,201,527	45,537,572	126,128,361	4.20	69,810,548
1931	3,321,736,996	515,584,069	424,823,685	36,863,350	44,119,880	1.33	D 22,562,485
1932	3,300,356,863	377,781,440	312,379,830	31,784,693	25,802,843	0.78	D 48,626,465
1933	3,245,727,101	388,514,453	291,234,184	28,256,926	59,677,490	1.84	D 16,048,078
1934	3,214,398,995	408,242,449	315,267,590	27,034,974	54,520,803	1.70	D 19,228,469
1935	3,182,822,004	429,651,453	342,529,025	28,079,336	49,301,947	1.55	D 24,736,251
1936	3,174,468,831	500,904,542	371,241,330	37,018,915	80,146,408	2.52	10,743,969
1937	3,155,343,353	516,590,873	390,555,654	39,199,291	74,160,012	2.35	6,601,155
1938	3,173,336,647	471,305,776	357,486,929	42,056,626	60,204,023	1.90	D 9,734,450
1939	3,183,259,365	512,031,356	378,090,055	43,853,775	79,592,778	2.50	11,667,811
1940	3,184,435,186	545,276,358	404,502,838	48,623,247	81,939,906	2.57	15,726,381
1941	3,273,594,731	698,242,859	472,968,083	76,416,137	138,673,394	4.24	74,845,799
1942	3,338,644,861	1,052,924,537	622,964,370	194,186,597	214,151,928	6.41	153,250,208
Avg. 1931–42	$3,229,010,410	$534,754,180	$390,336,964	$52,781,156	$80,190,951	2.48	$10,991,594
Avg. 1921–42	$3,127,720,794	$642,064,348	$481,639,038	$49,488,617	$101,071,592	3.23	$37,727,482

D—Denotes Deficit. *a* Includes allowance for working capital.

SOURCE: Association of American Railroads—Bureau of Railway Economics.

[fol. 1884]

Average Rates of Return, 1921–42

Weighted in Proportion to Average Miles of Road Operated

Railroads Operating in State of Alabama

Road	Entire Line			In State of Alabama		
	Miles	Return	Weighting	Miles	Return	Weighting
Alabama Great Southern	315	4.44	1,399	261	4.44	1,159
Alabama, Tenn. & Northern	218	0.80	174	218	0.80	174
Atlanta, Birmingham & Coast	639	d1.20	d 767	154	d 1.20	d 185
Atlantic Coast Line	5,074	3.10	15,729	248	3.10	769
Central of Georgia	1,870	2.70	5,049	561	2.70	1,515
Gulf, Mobile & Ohio	2,027	2.82	5,716	427	2.82	1,204
Illinois Central	4,937	3.37	16,638	128	3.37	431
Louisville & Nashville	4,871	3.77	18,364	1,171	3.77	4,415
Nashville, Chatta. & St. L.	1,112	2.47	2,747	111	2.47	274
St. Louis-San Francisco	4,812	3.00	14,436	341	3.00	1,023
Seaboard Air Line	4,294	2.42	10,391	208	2.42	503
Southern	6,622	3.73	24,700	1,029	3.73	3,838
Tenn., Alabama & Georgia	95	3.05	290	44	3.05	134
Western Ry. of Alabama	133	3.04	404	133	3.04	404
Weighted	37,019	3.11	115,270	5,034	3.11	15,658

d—denotes deficit.

SOURCE of Mileage Figures: Reports of the carriers to the Interstate and State Commissions.

[fol. 1885]

Fact and Extent of Revenue Need
Average Year of 22 (1921–42, Inclusive)
Weighted in Proportion to Miles of Road Operated at Close of Year 1942
Railroads Operating in State of Alabama

Road	Entire Line			In State of Alabama		
	Miles	Ratio	Weighted	Miles	Ratio	Weighted
A G S	315	105	33,075	261	105	27,405
A T & N	218	140	30,520	218	140	30,520
A B & C	639	137	87,543	154	137	21,098
A C L	4,991	111	554,001	248	111	27,528
C of Ga	1,816	114	207,024	523	114	59,622
G M & O	1,969	113	222,497	404	113	45,652
Ill. Cent	4,841	111	537,351	128	111	14,208
L & N	4,745	108	512,460	1,166	108	125,928
NC&St. L	1,090	116	126,440	104	116	12,064
St. L–SF	4,671	116	541,836	342	116	39,672
S A L	4,184	118	493,712	201	118	23,718
Southern	6,514	110	716,540	1,065	110	117,150
T A & G	95	110	10,450	44	110	4,840
W. Ry. of Ala	133	109	14,497	133	109	14,497
Weighted	36,221	113	4,087,946	4,991	113	563,902

Source of Mileage Figures: Reports of the Carriers to the Interstate and State Commissions.

[fols. 1886-1887]

Elements of Value of Property Used in Common Carrier Service as of January 1, 1940
Railroads Operating in State of Alabama

Road	Basis A Production Cost	Basis B Reproduction Estimate	Current Appraisal		Capital Outlay	
			Lands	Working Capital	Basis A	Basis B
Alabama Great Southern	$35,341,407	$36,599,880	$3,198,083	$230,100	$38,769,590	$40,028,063
Atlanta, Bgham. & Coast	24,270,485	31,906,776	2,075,966	338,900	26,685,351	34,321,642
Atlantic Coast Line	261,004,816	303,319,011	20,864,432	3,542,800	285,412,048	327,726,243
Central of Georgia	106,525,026	127,121,978	11,127,123	979,500	118,631,649	139,228,601
Gulf, Mobile & Ohio	86,144,899	100,411,738	4,573,433	2,085,700	92,804,032	107,070,871
Ill. Central Co.	574,215,160	622,217,409	73,060,187	5,643,700	652,919,047	700,921,296
Louisville & Nashville	500,444,673	569,677,300	25,805,045	8,377,500	534,627,218	603,859,845
Nashv., Chatta. & St. L.	79,152,374	96,871,316	11,848,679	1,662,860	92,663,853	110,382,795
St. Louis-San Francisco	298,731,038	331,703,737	20,092,158	4,132,500	322,955,696	355,928,395
Seaboard Air Line	238,216,451	257,154,989	15,905,922	3,654,700	257,777,073	276,715,611
Southern Ry.	493,419,141	575,189,378	46,116,614	5,732,800	545,268,555	627,038,762
Western Ry. of Alabama	10,184,899	11,920,390	950,873	207,200	11,342,972	13,078,463
Total	$2,707,650,369	$3,064,093,902	$235,618,515	$36,588,200	$2,979,857,084	$3,336,300,617
Ratio	100	113			100	112

SOURCE: Exhibit A-11, Ex Parte No. 148.

[fol. 1888] EXHIBIT 18

[fol. 1889] Before the Alabama Public Service Commission

Investigation & Suspension Proceeding

In Re: Increased Intrastate Fares and Charges from, to and between points in Alabama

Docket 8618

THE ALABAMA GREAT SOUTHERN RAILROAD, ALABAMA, TENNESSEE & NORTHERN RAILROAD CORPORATION (John T. Cochrane, Jr., Trustee), Atlanta, Birmingham and Coast Railroad, Atlantic Coast Line Railroad, Central of Georgia Railway (M. P. Calloway, Trustee), Gulf, Mobile & Ohio Railroad, Illinois Central Railroad, Louisville & Nashville Railroad, The Nashville, Chattanooga & St. Louis Railway, St. Louis-San Francisco Railway (J. M. Kurn and John G. Lonsdale, Trustees), Seaboard Air Line Railway (L. R. Powell, Jr., and Henry W. Anderson, Receivers), Southern Railway Company, Tennessee, Alabama & Georgia Railway, The Western Railway of Alabama, Respondents

Alabama Public Service Commission,

Montgomery, Alabama

Tuesday, November 24, 1942, at 11:25 o'clock a. m.

Before Hon. Hugh White, President; Hon. H. F. Lee, Associate Commissioner; Hon. W. C. Harrison, Associate Commissioner; J. G. Bruce, Chief, Transportation Bureau

APPEARANCES:

L. L. Oliver, c/o Southern Railway Company, Washing- [fols. 1890 1891] ton, D. C., appearing for Alabama Lines whose tariffs are under suspension.

T. J. Stewart, General Passenger Agent, Savannah, Georgia, appearing for Central of Georgia Railway.

W. W. Wharton, Assistant General Passenger Agent, Jacksonville, Florida, appearing for Atlantic Coast Line.

John B. Patterson, Traveling Passenger Agent, P. O.

Box 788, Montgomery, Alabama, appearing for Western Railway of Alabama.

W. H. Amerine, Commercial Agent, P. O. Box 1121, Montgomery, Alabama, appearing for Seaboard Air Line Railway Passenger Traffic Manager.

J. A. Bliss, Office of Price Administration, Washington, D. C., appearing for Leon Henderson, Price Administrator, and James F. Byrnes, Director of Economic Stabilization.

J. Mac Jones, Bell Building, Montgomery, Alabama, appearing for Leon Henderson, Price Administrator, Office of Price Administration.

[fol. 1892] Proceedings

President White: The next case to be heard by the Commission at this time is Commission's Docket No. 8618, which is an investigation and suspension proceeding upon the proposal of the respondents to increase intrastate railway passenger fares and charges from, to and between points in Alabama in coaches, as I recall the application.

The increase is limited to coach fares, isn't it?

Mr. Bliss: That is not my understanding.

President White: Maybe I am in error.

Mr. Oliver: It is coach fares and certain round trip Pullman fares with different limits; we will explain that in the proceeding.

President White: Have the respondents entered their appearances in writing?

Mr. Oliver: Yes sir.

President White: The Commission will then take other appearances.

Mr. Bliss: J. A. Bliss, of the Office of Price Administration, Washington, D. C., and J. Mac Jones, care of Office of Price Administration, Montgomery, Alabama, appearing for James F. Byrnes, Director of Economic Stabilization and Leon Henderson, Price Administrator. This is an intervention such as is contemplated by the Act of October 2nd.

President White: 1942?

[fol. 1893] Mr. Bliss: 1942, that is right.

President White: You mean the Act of Congress?

Mr. Bliss: Yes sir, the Act of October 2nd, 1942, is entitled an Act to amend the emergency price control Act of 1942, to aid in preventing inflation, and for other purposes.

This Act provides: "That no common carrier or other public utility shall make any general increase in its rates or charges which were in effect on September 15, 1942, unless it first gives thirty days' notice to the President, or such agency as he may designate, and consents to the timely intervention by such agency before the Federal, State, or municipal authority having jurisdiction to consider such increase."

President White: As I understand, that notice has been given in this case by the respondents, is that correct?

Mr. Bliss: It has.

President White: Then no question is raised on notice not having been given?

Mr. Bliss: No sir.

President White: Are there any other appearances?

(No response.)

President White: If not, let those who will testify be sworn.

(Witnesses present sworn.)

Mr. Bliss: We will have another witness that will arrive [fol. 1894] in about an hour on another train.

President White: You don't ask that the proceedings be delayed on that account?

Mr. Bliss: No, but in swearing them in, I just wanted to call that to your attention.

President White: The first witness for the respondents.

Mr. Oliver: I will call Mr. Barry.

E. E. Barry, being first duly sworn, testified as follows:

Direct examination.

By Mr. Oliver:

Q. Mr. Barry, will you give your initials to the Reporter, please, sir?

A. My name is E. E. Barry.

Q. By whom are you employed and what is your official position?

A. I am employed by the Southern Railway, Assistant Passenger Traffic Manager, Washington, D. C.

Q. You also act for the Southern Railway System Lines, do you not, in the same capacity?

A. Yes sir.

Q. State very briefly the experience that you have had in the passenger department of the Southern Railway Company?

A. I entered the employ of the Southern Railway in January, 1911, and have been with them since, through [fol. 1895] different positions, and entered my present position on November 1, 1937.

Q. On whose behalf are you testifying in this proceeding?

A. Southern Railway Company was designated to act as chairman of the railroad committee in this proceeding, and I am testifying on behalf of all of the railroads whose tariffs are under suspension.

Q. What one-way coach fare is now being maintained generally by the roads operating in Alabama for intrastate transportation within the state?

A. The basis generally maintained by the southern roads is 1.65 cents per mile. However, certain of the Alabama railroads, such as the Illinois Central, the St. Louis & San Francisco, and the Gulf, Mobile & Ohio, now have in effect a fare of 2.2 cents per mile, except in instances where they are forced to carry a lower fare to meet the competition of southern lines.

Q. What one-way coach fare is being charged by all Alabama railroads for interstate transportation to and from points in Alabama?

A. 2.2 cents per mile.

Q. Is this 2.2 cents fare now in effect for interstate transportation generally throughout the south?

A. Yes.

Q. Is the same fare of 2.2 cents per mile applicable at the present time generally throughout the entire United States?

[fol. 1896] A. Yes, including the railroads operating in Official Classification Territory, as well as the railroads (with possibly a few exceptions) operating throughout the entire territory west of the Mississippi River.

Q. Is it the desire and purpose of the southern railroads to make the same fare applicable for intrastate transportation in each of the southern states and have proceedings to that end already been commenced before each southern state commission?

A. Yes. Petitions have been filed in those states the laws of which require that authority of the state commission be first obtained. In other southern states, in which there is no such requirement, tariffs designed to make effective the increases have been duly filed with the state commissions. I might add that hearings have already been had in Virginia, South Carolina, and Florida.

Q. When and under what circumstances was the 2.2 cents fare made applicable for interstate transportation generally throughout the south?

A. This fare was made applicable on October 1, 1942, pursuant to authority granted by the Interstate Commerce Commission by order dated August 1, 1942, in Ex Parte No. 148, Increased Railway Rates, Fares and Charges, 1942, 248 ICC 545. I have copy of this order which I would like to file as an exhibit.

[fol. 1897] President White: That is the order in Ex Parte 148?

Mr. Oliver: Yes sir, it is Ex Parte 148, but it relates to the passenger fares instead of the general increase in the freight rates.

President White: I think it is already of record in our other proceedings where the carriers submitted for approval of the first increase, that is 10 cent increase, but we have no objection to your putting it in here in order to show the situation.

Mr. Oliver: This is the order of August 1, 1942, authorizing the increase in coach fares, passenger fares.

President White: Very well.

Q. Proceed, please.

A. This order was entered by the Interstate Commerce Commission in response to a petition filed by substantially all railroads operating in Southern Passenger Association Territory, dated July 14, 1942, wherein permission was sought by the southern roads (except those roads which were maintaining at the time a coach fare of 2.2 cents) to place their one-way coach fares on the same basis which was already applicable generally throughout the rest of the United States.

President White: This order is marked Exhibit No. 1.

(Exhibit No. 1, Witness Barry, marked for identification.)

Q. Will you proceed?

A. When this petition was filed most of the southern [fol. 1898] roads had in effect a coach fare of 1.65 cents per mile. However, certain roads, notably the Illinois Central System, St. Louis-SanFrancisco Railway, Gulf, Mobile & Ohio and several others, were already maintaining a fare of 2.2 cents, which was the basis generally applicable throughout the rest of the country.

Q. When the above-mentioned petition was filed with the Interstate Commerce Commission, was any objection to the proposed increase made by anyone before that Commission?

A. No. However, after the Interstate Commerce Commission had entered its order of August 1, 1942, approving the proposed increase, and after the tariffs had been filed as authorized by the Interstate Commerce Commission, Mr. Leon Henderson, Price Administrator, filed a written protest and request for suspension. The railroads duly filed their answer to this protest. I now wish to file copy of this answer as an exhibit.

President White: This document identified by the witness is marked Exhibit 2.

(Exhibit No. 2, Witness Barry, marked for identification.)

The Witness: The Interstate Commerce Commission refused to suspend the tariffs and they became effective, as stated, on October 1, 1942.

President White: Did the Commission enter an opinion or order other than the final order denying the request to suspend?

[fol. 1899] Mr. Bruce: The Commission briefly denied the suspension, and it is just on a form that they use, it us just a mimeograph form.

Mr. Bliss: I have the language that they used if you want to have it read into the record at this point.

President White: May I see it? I think possibly the record is sufficient. That just happens to be quoted in that document.

Mr. Bliss: Yes sir.

President White: It is brought to the attention of the Commission by the Office of Price Administrator, as we will use the term in this case to refer to the Federal intervention —he has called our attention to this language used by the Interstate Commerce Commission in declining to suspend

the interstate tariffs referred to; and the statement is as follows:

> "The Commission's action in thus permitting the protested schedules to become effective as published without prior investigation under the authority conferred upon it by Section 15—(7) of the Interstate Commerce Act does not constitute approval thereof, since any or all of such schedules are subject to investigation for conflict with any provisions of said Act upon formal complaint which may be filed at any time in accordance with the Commission's Rules of Practice."

[fol. 1900] Go ahead, gentlemen.

Q. How did it happen that prior to October 1, 1942, some, but not all, of the southern railroads had in effect a coach fare of only 1.65 cents per mile, whereas the fare generally applicable in other parts of the country was 2.2 cents per miles?

A. Prior to 1933, the coach fare generally applicable in the southeast, both state and interstate, including Alabama, was 3.6 cents per mile. About that time some of the southern roads decided, as an experimental proposition, to establish a lower fare for travel in coaches, solely for the purpose of attempting in that manner to attract additional coach travel to the railroads in competition with other forms of transportation, particularly buses and private automobiles.

For example: Southern Railway Company adopted a base fare of 1.5 cents per mile on certain portions of its line. Then the Norfolk Southern Railroad on January 15, 1933, adopted a base fare of 1.5 cents per mile on certain portions of its line and on March 1, 1933, extended that basis to cover its entire line.

On April 1, 1933, the Louisville and Nashville Railroad, Nashville, Chattanooga and St. Louis Railway, Atlanta and West Point-Western Railway of Alabama, and Mobile and Ohio Railroad placed in effect experimental one-way fares [fol. 1901] on basis of 3 cents per mile for travel in sleeping or parlor cars, and 2 cents per mile for travel in coaches, which basis remained in effect until December 1, 1933.

On December 1, 1933, the Southern lines generally placed in effect experimental fares on basis of 3.0 cents per mile in sleeping or parlor cars without surcharge, and 1.5 cents per mile in coaches. The Central of Georgia, Gulf, Mobile

& Northern, Illinois Central, Mobile & Ohio, Richmond, Fredericksburg and Potomac, and St. Louis-San Francisco retained the old basis of 2.0 cents per mile, meeting competition where necessary.

On September 1, 1936, the Atlantic Coast Line Railroad increased the fare for transportation in coaches to 2 cents per mile, meeting competition of lines maintaining coach fare of 1.5 cents per mile where necessary.

In Docket No. 26550, Passenger Fares and Surcharges, decided February 28, 1936, and reported in 214 ICC 174, the Interstate Commerce Commission after conducting a very extensive investigation found that passenger fares of 2 cents per mile in coaches and 3 cents per mile in sleeping or parlor car services throughout the United States would be reasonable.

In the same case the Commission referred to what it described as the "experimental fare" of 1.5 cents which was then being maintained by certain railroads in the south, [fol. 1902] and although approving the reasonableness of a fare of 2 cents per mile, held that this reduced rate of 1.5 cents was not "unlawful". Thereafter, effective November 15, 1937, the southern roads increased their basic coach fare to 2 cents per mile, but subsequently certain of the southern roads, not including, however, the Illinois Central, St. Louis-San Francisco Railway, Gulf, Mobile and Ohio Railroad and possibly some of the smaller roads, concluded that it would be to their best interest to restore the former fare of 1.5 cents, and this was accordingly done effective January 15, 1939.

By its order of January 21, 1942, in Ex Parte No. 148, the Interstate Commerce Commission, upon petition of the railroads operating throughout the United States, approved a uniform increase of 10 per cent in all passenger fares, with certain provisions as to the disposition of fractions. Accordingly, passenger fares throughout the United States were increased 10 per cent effective February 10, 1942.

The general basis of coach fares applicable in the south, with the exception heretofore mentioned, thus became 1.65 cents per mile.

On the other hand, the former fare of 2 cents per mile which was being maintained by the railroads in other parts of the country, including some of the railroads in the south, became 2.2 cents per mile. This increase was also approved

by this Commission for intrastate travel on lines then main-
[fol. 1903] taining a 2 cents per mile basis as well as lines maintaining a basic fare of 1.5 cents per mile.

Q. Do you, as an experienced railroad traffic official, know of any reason which would require or justify the maintenance of a fare of only 1.65 cents for intrastate coach transportation within the State of Alabama while at the same time an interstate passenger traveling to or from the same points in the state would pay 2.2 cents per mile?

A. No.

Q. Do the interstate and intrastate passengers very frequently ride on the same trains and in the same coaches?

A. Yes.

Q. With the present differences between intrastate fares and interstate fares, is it possible for a passenger to defeat the interstate fares by buying an intrastate ticket for a part of an interstate journey?

A. Yes. For instance, the published interstate fare from Mobile, Alabama, to Nashville, Tennessee, is $10.41. On combination of fares, Mobile to Decatur, Alabama, (intrastate) of $5.90 and Decatur, Alabama, to Nashville, Tennessee, (interstate) of $2.68 the through fare from Mobile to Nashville would be reduced by $1.83.

Again, the through interstate fare, Columbus, Georgia, to Birmingham, Alabama, is $3.34. On combination of fares, Columbus, Georgia, to Phenix City, Alabama, (inter-
[fol. 1904] state) of eleven cents and Phenix City, Alabama, to Birmingham, Alabama, (intrastate) of $2.50 the through fare from Columbus to Birmingham would be reduced by 73 cents.

Through interstate fare, York, Alabama, to Chattanooga, Tennessee, is $5.98. On combination of fares, York, Alabama, to Valley Head, Alabama, (intrastate) of $3.85 and Valley Head, Alabama, to Chattanooga, Tennessee, (interstate) of 92 cents, the through fare from York to Chattanooga would be reduced by $1.21. These illustrations could be multiplied indefinitely.

Q. Do you know of any reason why a passenger traveling in Alabama should pay a lower fare than passengers traveling in the densely populated sections of the north and east, for example, where the volume of travel is far greater than it is in Alabama?

A. No.

Q. Did the Interstate Commerce Commission have before it in Ex Parte No. 148 a full and complete record of the facts concerning revenues, expenses, operating conditions, financial conditions, etc., of the southern railroads, including the Alabama lines, as well as railroads operating in other parts of the country?

A. Yes. Copy of the record is on file with this Commission.

President White: Do you mean a copy of the financial statements is set out in Ex Parte 148?

[fol. 1905] The Witness: That is right, sir.

Mr. Oliver: I would like to ask—

President White: Of course, that case was decided in the first part of this year, wasn't it?

Mr. Oliver: It was decided in January of this year, yes sir.

President White: And the financial statistics in that record did not come up even to the first of January, 1942, as I recall.

Mr. Oliver: I think you are correct about that, sir.

President White: I don't recall what time that came, possibly not later than October, '41.

Mr. Oliver: I might state at this point that we intend to bring down some of these figures for the first eight months of 1942 so you will have before you a rather complete picture.

President White: Will Mr. Barry offer that?

Mr. Oliver: No sir, that will be offered by an accounting or statistical witness.

President White: All right.

Mr. Oliver: I would like to ask that this Commission make available to itself the record in Ex Parte 148, which is on file with you.

President White: Any objection?

Mr. Bliss: No sir; but I would like to ask Mr. Oliver if he would be willing that this Commission take into con-

[fol. 1906] sideration such statistical statements that have come from the Interstate Commerce Commission, like Statement M-100 for the various months so far in 1942.

Mr. Oliver: That is not on file with this Commission.

Mr. Bliss: I believe that the Commission has copies of it.

Mr. Oliver: I think that we should limit it to what the Commission had before it in Ex Parte 148. That is as far as

I am going, and I am undertaking to bring out certain figures since that time. I think you are familiar with that.

President White: After respondents' witnesses testify, you will have the privilege of offering whatever you think is material and relevant, and we will consider it when it is offered.

Mr. Bruce: Is the Commission to understand that you are standing on the same principle in this case that you did in Ex Parte 148, the revenue case?

Mr. Oliver: It is not strictly a revenue case, Mr. Bruce.

President White: What is the basis on which the repondents are asking for the approval of the increased fares in this case? That question is properly addressed to counsel and not to the witness, I think.

Mr. Oliver: It is to an extent a revenue case,—at least, the carriers are interested in the revenue. They have [fol. 1907] filed with the Interstate Commerce Commission an application to increase the fares or to put their fares on the basis that the fares are on in the rest of the country, and the Interstate Commerce Commission has permitted that. Now, we want to bring the state fares to the same level.

President White: As I understand the action of the Interstate Commerce Commission, they made no adjudication that the increased rate was just and reasonable or otherwise lawful. That is my interpretation of the paragraph that was read into the record, the statement issued by the Commission, and I think it would follow as a matter of law whether they had said anything or not, the mere permission of a tariff to become effective without any notice and hearing and without any quasi adjudication, that the changed rate is just and reasonable and otherwise lawful, would make it what we call a permissive rate.

Mr. Oliver: Well, Mr. Chairman, we go back farther than that. You are talking now about the suspension—

President White: Yes, I have not forgotten the decision of the Commission in Docket 26550 where they decided that 2 cents in southern territory would not exceed a reasonable rate.

Mr. Oliver: Yes sir.

President White: And, of course, that adjudication still stands.

[fol. 1908] Mr. Oliver: Yes sir, and in the order of August 1, 1942, they permitted the carriers to file tariffs to

bring up their fares to that basis plus the Ex Parte 148 increases.

President White: When they permitted you to increase them to 2.2 they exceeded the rate that they approved as reasonable in Docket 26550. That is just 10 per cent, but it is 10 per cent.

Mr. Oliver: You are correct about that, of course, but, in the meantime, they had authorized a general 10 per cent increase in passenger fares on the northern roads and the western roads and some of the southern roads.

President White: But that 10 per cent granted in the Commission's order on January 21, 1942, in Ex Parte 148, that the 10 per cent increase allowed was referable to that effective date and not what they had found to be reasonable in Docket 26550.

Mr. Oliver: Yes sir, the 2 cent fare or the 1.65 fare, or whatever it happened to be in the order of August 1, 1942, the Interstate Commerce Commission authorized the carriers to file tariffs bringing their fares up to 2.2 cents.

President White: That is true.

Mr. Oliver: In answer further to your question, Mr. Bruce, as I say, it is, to an extent, a revenue case, but we are attempting to put the intrastate fares on the interstate basis and eliminate any possibility of discrimination.

[fol. 1909] Mr. Bruce: The reason I asked the question was this—that you are placing yourself in the position today, by making reference to the record made before the Commission in January of this year in the revenue case, and if you do that, then the Commission has to take into consideration what your revenues are.

Mr. Oliver: We are undertaking to show that from a financial standpoint that the carriers have not earned in all of the years, on the passenger business, a fair return on their investment, and that even at the moment, most of the carriers, from a passenger standpoint, ar in the red, and that we are stressing it on that basis, and, in addition to that, we are trying to iron out any inconsistency between the interstate and the intrastate fares from a discrimination standpoint.

President White: All right. Proceed.

Q. Are the railroads, including the Alabama lines, encountering any particular difficulties and expense in con-

nection with passenger operations under existing conditions?

A. Yes, in many ways. In the handling of military movements substantial added costs are necessarily incurred. The equipment must be assembled at point of origin and such equipment must be returned from destination point, thus making a two-way movement on which revenue is received on a one-way haul only.

Also, in compliance with Government requirements, it is [fol. 1910] necessary to have a train escort ride all troop trains, which places an added burden of expense on the railroads.

To give the protection required by the Government for military movements, employees in general offices must be on duty, in shifts, 16 hours, and in some cases 24 hours, each day, and necessarily there has been a substantial increase in personnel and expense in general passenger offices.

Due to the tremendous increase in the volume of civilian travel, the railroads have been compelled to practically double the ticketing and accounting forces in nearly all of their ticket offices, and increase the personnel of passenger offices at larger points, such as Birmingham, Mobile, Anniston, etc.

Since 1933, the southern railroads have spent large sums of money in remodeling and air-conditioning their passenger equipment, in their efforts to recapture travel from other modes of transportation, particularly from the highways, thereby providing additional comfort and convenience for their patrons. This has materially increased the cost of passenger service.

For example, during this period on Southern Railway System Lines 189 coaches have been air-conditioned or purchased new with air-conditioning facilities. Many coaches have been remodeled to provide commodious dressing rooms for both ladies and men, with soap, towels and drinking cups furnished free. These improvements resulted [fol. 1911] in reducing the seating capacity per coach from 80 to 88 persons to 70 persons.

Additionally, 14 coaches have been equipped with reclining seats and in these coaches the seating capacity was reduced from 80 persons to 46 persons, which, of course, greatly decreases the carrying capacity and correspondingly lowers revenue per coach.

In addition to the improvements stated, Southern Railway System Lines have purchased new, six streamlined passenger trains with a total of 21 coaches, six combination baggage coaches, five dining cars and six buffet coaches; six two-car Diesel units and sixteen Diesel powered locomotives for passenger train service.

President White: How much of that deluxe service is available for intrastate transportation of passengers in Alabama?

The Witness: Well, practically across the entire state from the Georgia-Alabama state line to the Alabama-Mississippi state line, through Birmingham, Anniston, Tuscaloosa.

President White: Do you know how many local stations those trains stop at besides Birmingham in Alabama?

The Witness: They stop at Anniston, Birmingham and Tuscaloosa, I believe.

President White: All right.

[fol. 1912] The Witness: That is the Southern Railway trains.

President White: Yes.

Q. Will you please proceed?

A. On streamlined passenger trains, operated on the Atlantic Coast Line, the Louisville & Nashville, Illinois Central, and the Southern, uniformed passenger representatives accompany each train, whose duty it is to give helpful service and assistance in making the passenger's trip comfortable and pleasant. There is also provided on these trains one attendant to each two coaches and a hostess or maid whose especial duties are to look after the comfort of women and children. All of these refinements add to the expense of operation.

The added facilities and improvements provided are available to Alabama intrastate passengers as well as interstate passengers to or from Alabama, and the interstate passenger is now paying for this service on basis of 2.2 cents per mile, whereas the intrastate passenger is paying only 1.65 cents per mile.

Q. Please state for the record the number of troop trains operated on Southern Railway System Lines during the months of September and October, 1942, and the number of cars handling troops operated in your regular passenger

trains during those months. Please also give the number of regular trains which were operated in two sections during the same two months.

[fol. 1913] A. On Southern Railway System Lines during the month of September there were operated 429 troop trains. 219 regular trains were operated in two sections, and 1776 extra cars handling troops were operated in regular trains. During October there were operated on Southern Railway System Lines 384 troop trains. 132 regular trains were operated in two sections and 1565 extra cars handling troops were operated in regular trains.

Q. Does the Government pay full tariff fares for troop movements?

A. No. On military movements the Government receives a deduction of 50 per cent on land grant mileage.

In Alabama, as in my other states, there is considerable land grant mileage. The entire mileage in Alabama of the Alabama Great Southern Railroad, 244.94 miles, is land grant.

The line of Southern Railway Company from Jacksonville, Alabama, to Selma, Alabama, a distance of 145 miles, is land grant. There is substantial land grant mileage on other Alabama railroads.

The Government will pay for military transportation only on basis of lowest net fare and thus in many instances railroads with no land grant mileage must accept the deduction on movements handled in competition with lines having land grant mileage; for example, the same published fare from Selma, Alabama, to Washington, D. C. applies via Birmingham, AGS to Chattanooga, thence Bris-

[fol. 1914] tol and Lynchburg, or via Western Railway of Alabama to Montgomery and Atlanta, thence Southern Railway or Seaboard Airline Railway.

As previously stated, the AGS Railroad in Alabama is land grant mileage and the net fare which the Government would pay would be constructed by this route which gives land grant deduction. The route by Atlanta has no land grant mileage, but the lines operating over this route would receive only the lowest competitive net fare, being required to absorb the applicable land grant deduction.

Additionally, on military travel an allowance is made to the Government of 5 percent from commercial fares of all classes between points between which no land grant deductions are applicable, and 3 per cent of net fares of all

classes applying from point of origin to destination via routes over which land grant deductions are applicable on any part of the through route.

Q. The suggestion has been advanced that the southern railroads, including the Alabama lines, are seeking to "take advantage of present war conditions," feeling that "due to war conditions which have seriously affected their competition they are able to increase these rates." What have you to say upon that subject?

A. The Alabama railroads are not "seeking to take advantage of present war conditions." They are merely seeking to place their coach fares in Alabama upon the [fol. 1915] same basis that is applicable generally on railroads in other parts of the country, and that has been specifically approved by the Interstate Commerce Commission and made applicable for interstate travel to and from Alabama points.

Should there be a failure to increase the intrastate fares to the interstate level already in effect they feel that there would be created a direct violation of the provisions of the Interstate Commerce Act.

I have already illustrated how the interstate fares may be defeated by purchasing intrastate tickets for portions of interstate trips. As will be shown by a subsequent witness, these railroads over a long period of years have shown a deficit from passenger operations, thereby placing an added burden upon freight and other classes of service.

While it is recognized, and admitted, that the railroads, including the Alabama lines, have experienced a greatly increased passenger travel, with substantial increases in gross passenger revenues during the years 1941 and 1942, they have, at the same time, been confronted with many and substantial increases in operating expenses, some of which I have mentioned, including, among other things, wage increases as well as large increases in taxes, which will be even greater under the Revenue Act of 1942.

It must be recognized, also, that the increases in gross [fol. 1916] revenue during recent periods are directly attributable to abnormal conditions growing out of the war, and that when the war is over and the country returns to normalcy, certainly the railroads may expect a return of competition, and in even stronger volume, due to the lifting of rubber and gasoline restrictions, the rebuilding of pres-

ent highways and the construction of other and better highways.

We may also reasonably expect volume production of bigger, better and cheaper automobles and buses, and strong passenger competition from the airways.

As I have previously shown, this coach fare in Alabama, and elsewhere in the south, would today be on the basis which is here being proposed, and which is already very generally in effect as previously stated, except for the fact that these railroads had established a special and extremely low coach fare of 1.5 cents per mile under conditions and for reasons which no longer exist.

Q. Will all coach travel be affected by the proposed increase if it is approved and made effective?

A. By no means. In the protest above referred to something was said about the movement of "relatives and friends of men in the armed forces who desire to visit the various encampments." The Alabama railroads are not seeking to charge such relatives and friends of men in the service any more than they are now paying generaly for passenger transportation in the north, east, and west, and interstate [fol. 1917] in the south. Moreover, if the proposed fares become effective, such relatives and friends will still be able to travel to and from the army camps by buying round trip tickets at less than 2 cents per mile. Furthermore, the soldier or sailor or marine or coast guard, or any member of the armed forces in uniform on furlough will still be able to travel over petitioners' lines at 1-1/4 cents per mile.

It may be mentioned also that the revenue which is derived from coach transportation represents less than 50 per cent of the total passenger revenue, and there is no proposal here to increase the one-way fares in sleeping or parlor cars. Moreover, the revenue derived from coach transportation includes a substantial volume of travel by furloughed military personnel at the above-mentioned fare of 1¼ cents per mile, which it is not here proposed to change.

Q. In the suspended tariffs, certain changes are proposed in round trip fares, both in coaches and pullman cars. Please explain the nature and purpose of these changes.

A. Prior to October 1, 1942, there were in effect round trip fares in the southeast and other territories con-

structed on various basic rates per mile and with varied return limits. Effective October 1, 1942, the lines generally in all territories adopted two round trip fares, one good in pullman and one good in coaches only, and used a uni-
[fol. 1918] form limit of three months on both classes. These fares have been approved by the Interstate Commerce Commission and are now in effect for interstate travel. The round trip coach fares, so approved, are made on the basis of 180 per cent of the one-way coach fare of 2.2 cents per mile for the round trip, or 1.98 cents per mile traveled.

The round trip fares good for interstate transportation in sleeping or parlor cars approved by the Interstate Commerce Commission, as above stated, are on the basis of 2.75 cents per mile.

Under the suspended tariffs the carriers are seeking to establish exactly the same basis of fares for intrastate transportation in Alabama.

In other words, they propose to cancel their current fifteen day limit coach fares (1.485 cents per mile) and their sixty day limit coach fares (1.65 cents per mile) and to substitute in lieu thereof round trip three months limit fares on the basis of 180 per cent of the proposed one-way coach fares of 2.2 cents per mile for the round trip, or 1.98 cents per mile traveled; also to cancel their current thirty day limit fares (2.475 cents per mile) and their current six months limit fares (2.75 cents per mile) good for transportation in sleeping or parlor cars, and to substitute in lieu thereof round trip three months limit fares on basis of 2.75 cents per mile.

[fol. 1919] Q. Mr. Barry, do the railroads generally have in effect in Alabama any commutation fares?

A. No sir.

Q. Do you know of any on your Southern Railway System Lines?

A. I don't recall that we have any commutation fares in Alabama.

Mr. Oliver: That completes the direct examination.

Commissioner Harrison: You mean on your line?

The Witness: On the Southern Railway.

President White: I think there are some commutation fares in effect between Birmingham and the powder plant near Childersburg, whatever the rail station is there,—but

I believe that is over the Central of Georgia and the AB&C. Tallacoosa is the name of the station, I believe, and it is the only commutation fares that I know of in the State of Alabama. Is it proposed here to affect those fares, or can you say?

The Witness: The Southern Railway having no fares of that kind in Alabama, I don't know.

President White: You don't know whether the other roads propose to make an increase in those commutation fares?

The Witness: No sir.

Mr. Oliver: The witness is ready for cross-examination.

By President White:

[fol. 1920] Q. As I recall your history of the passenger fares, both throughout the southern territory and in Alabama, the coach fare of 1.5 cents per mile and the one-way fare in Pullman cars, just the transportation, were maintained at 1.5 cents per mile coach fare, and 3 cents per mile for transportation in a Pullman for a period of about three years from the early part of 1939 to 1942?

A. Well, no, first, December, 1933, up until November 15, 1937, I believe.

Q. And then they were changed again?

A. Yes sir, changed back to 2 cents.

Q. But you did maintain them, as I recall the history, from the early part of 1939 to about February 1, 1942?

A. Yes sir, that is correct.

Q. During that period, it would appear from what the roads actually did, they regarded the relation of the one-way pullman transportation to the coach one-way transportation as being two to one? In other words, that represented their judgment as to the proper relation of the fares, is that correct? Would that be your judgment on the facts?

A. There was that difference in the fares, but the 1.5 fare was placed in effect as an experimental fare, either to recapture back to the coaches some traffic that was lost.

Q. But it was kept in effect for three years?

A. Yes sir.

[fol. 1921] Q. As I understand your proposal here now, it is that you want to increase your coach fare one-way, intrastate, in Alabama, to 2.2 cents per mile, but you pro-

pose to leave your fare in the Pullman, one-way transportation, at 3 cents per mile?

A. No sir, the Pullman fare now is 3.3 cents in Alabama.

Q. There is the 10 per cent increase granted in Ex Parte 148?

A. Yes sir.

Q. Then, it will be in the relation of 3.3 to 2.2 with this increase?

A. Yes sir.

Q. Why is it that you change your views about the relations that ought to exist under the present conditions as to the coach fare and the fare in Pullman cars? That is quite a difference in relationship. One is two to one, and the one that you are proposing would be two to three,—in other words, the coach fare would be two-thirds of the Pullman fare.

A. The coach fare of 1.5 cents per mile was not established on a definite relationship to the Pullman fare. It was established on an arbitrary experimental basis in an effort to get back from the automobiles and buses some of the travel that they had lost.

By Commissioner Harrison:

[fol. 1922] Q. The 1.5 fare at first was put in as an experiment?

A. Yes sir.

Q. And then did not the volume of your business increase month by month during the time that fare was in effect?

A. There was an increase.

Q. Both as to number of passengers and as to revenue?

A. I would say that that is correct. It might take 30 to 60 days to reflect the revenue increase.

Q. Then, in spite of that fact, the railroads came in and asked that the fare be increased to 2 cents, did they not, in November?

A. Yes sir.

Q. And then they tried it out for some three to six months, and the number of passengers and the revenue both began to fall off and on their own motion they came in and asked that the fare again be reduced to 1.5 further as an experiment?

A. I think it was referred to as an experimental fare.

Q. The first time it was, but they had that 1.5 cent fare in effect for four years and then they asked to increase it to 2 cents in November, and then in January of the next year, they asked that it be increased to 2.2 cents?

A. Your records will show it, whatever it was.

Q. Are you willing to have the exhibits that the railroads filed in that increased fare rate case made a part of the record in this case?

[fol. 1923] I don't think it is necessary, when they went back to 1.5 cents per mile, that was always referred to as an experimental fare.

Q. But they put it in effect for two years and then increased it to 2 cents?

A. Yes sir.

Q. And then you say that they put that fare in again as an experimental fare, the second time?

A. Yes sir.

Q. Have you anything to show that in your records?

A. No sir, not with me.

Q. Are you familiar with the fact that from the time the railroads placed in effect a passenger fare of 3.6 that the revenue and the number of passengers began to fall off?

A. Yes sir.

Q. And that when you dropped it to 3 cents, the number of passengers increased but your revenue did not, and then when you dropped it to 2 cents, the number of passengers still increased, but your revenue did not, but when you dropped it further to 1.5 cents your records, for the first time, showed both the number of passengers and your revenue increased?

A. That, I think, is correct.

Q. And your company filed an exhibit here to that effect when they came and asked the rate be fixed at 1.65?

A. Our particular company never put into effect the 2.2.

[fol. 1924] Q. But the railroads all came in and showed that?

A. Yes sir.

Q. And you have referred now to some luxurious train passing from Anniston to Birmingham and on through to Meridian?

A. Yes sir.

Q. And those trains go over the AGS?

A. Yes sir, that is a part of the Southern Railway System.

Q. That is a part of the Southern Railway System?

A. Yes sir.

Q. Are you familiar with the kind of service that you render from Wilton to Selma and from Selma to Demopolis? That is on the road that you represent, that you said runs across the state.

A. I can only answer that by saying that the travel on that division just absolutely almost disappeared, the passenger traffic.

Q. Are you familiar with the kind of service that you render over there now? I am asking you if you know what kind of passenger service you render on that road?

A. Yes sir.

Q. What is it?

A. You have one train a day over there.

Q. What kind of a train is it?

A. You have coaches on there.

Q. How many?

[fol. 1925] A. I think it is one and a half, as I recall it.

Q. How many cars are on that train?

A. I can't answer that because I imagine that that varies from day to day.

President White: In other words, is it a mixed train?

The Witness: Yes sir.

By Commissioner Harrison:

Q. That is a kind of a train that the Southern Railway runs all the way across the state, and you want a fare fixed on that train the same as on those luxurious trains that run from Anniston to Birmingham and to Tuscaloosa and which only stops at Anniston, Birmingham and Tuscaloosa in passing through the State of Alabama, and then goes on to Meridian, Mississippi?

A. You tell us that we can't discriminate.

Q. But haven't the railroads discriminated for 20 years on intrastate fares and interstate fares in the State of Alabama?

A. No sir, I wouldn't say so.

Q. Would you say that the fares on all the railroads in Alabama, all intrastate fares have been the same for the past ten years?

A. No sir, because different conditions have existed.

Q. Why do you try to come in now in this case and say that you want uniform fares in Alabama so that there will be no discrimination, when you never have had uniform [fol. 1926] fares in Alabama?

A. We haven't had it since the 3.6 fare, we did at one time have uniform fares in Alabama, at one time.

Q. When did the 3.6 fare go out?

A. I think it was in October, 1933; that was in 1933.

Q. Now, you have another luxurious train coming into the State of Alabama from Tennessee over the L&N Railroad that does not stop except for interstate passengers until it hits Birmingham, Alabama; and then it doesn't stop from Birmingham to Montgomery, another 100 miles, except to take on or let off interstate passengers, and then it goes from Montgomery to Mobile under the same conditions,—the same thing applies?

A. Yes sir.

Q. Now, that service is not available to the people of Alabama, is it, except to those points that I have named?

A. That is right.

Q. That is right?

A. That would be confined to the points that it stops at.

Q. And if it only stops to take on and put off interstate passengers, then no local passengers could ride it between those points?

A. No, a passenger could ride that train from Birmingham to Montgomery.

Q. No, I mean at these intervening points like Calera and Clanton?

[fol. 1927] A. That is right.

Q. That train doesn't stop to take on any Alabama passengers or to discharge them at any Alabama points except those that I have named?

A. That is right.

Q. Isn't it discriminating against the people of Alabama in the methods under which you operate and the manner in which you furnish service to the interstate traffic?

A. I think that those conditions meet the demands and the necessities and I think that the Commission is fully informed of those things, and we possibly have the same condition on some other train that doesn't stop at every little point.

Q. But isn't it discrimination, isn't there discrimination there against the intrastate passengers in the State of Alabama?

A. I wouldn't call it that.

Q. If an interstate passenger can ride in an air-conditioned coach through the State of Alabama, on one of these luxurious trains, and the Alabama man can't, the local intrastate Alabama passenger can't enjoy those services, do you say that the Alabama interstate passenger is not discriminated against?

A. I don't think so.

Q. If the train doesn't stop, how can he avail himself of its services?

A. In most of those instances, I would say that the serv-
[fol. 1928] ice would not be patronized.

Q. Because he is not afforded the opportunity, isn't that it?

A. You have your Alabama——

Q. Just take your road from Demopolis—are you familiar with the service that you render to Demopolis? You know that you just hook a passenger coach onto a freight train going across there and the schedule was that it left Demopolis and came over to Marion Junction, and unhooked from the passenger coach and the freight train part returned to Demopolis, and the passenger coach was sidetracked until a through freight from Mobile came by and picked it up, and it is taken on up the road a ways and it is unhooked from this through freight and sidetracked again at Wilton, and then another freight train comes along and carries it from Wilton on up to Rome, Georgia,—now, isn't that the kind of passenger service that you are rendering here in the State of Alabama?

A. The travel on that line had diminished or almost disappeared before that kind of service was established, or before the service was established on that basis.

Q. You have no passenger traffic there now, have you?

A. (No response.)

President White: Isn't it correct that just taking passenger train service, not including any mixed train service, the trains that carry most of the passengers traveling in-
[fol. 1929] terstate now, are the trains that have the better coaches and they have better engines, as a rule, and, as a general rule, they make comparatively few stops within the state, isn't that true, as a general proposition?

The Witness: I think that is true of the through trains, yes sir.

By President White:

Q. But your proposal here though would put the fare the same on these luxurious trains—take for illustration the limited passenger train between Montgomery and Birmingham, and I think there is a local out of Birmingham maybe to Decatur and then it goes to Nashville interstate, but those local trains have less comfortable appointments and less expensive cars and the inconvenience and discomfort of travel to the passengers where they are stopping at almost every station,—you are taking no account of that here in the establishment of your fares?

A. Well, I might say this: That a great deal of the coach equipment on all railroads now is being used by the armed forces.

Q. I know that is true.

A. And every railroad is limited as to the equipment that they have available for their regular trains. At least, I think we all agree that the greatest demand, where the heaviest travel is and where the greatest number of people [fol. 1930] are served, that that section would come first over a place where there is no demand for the service. We haven't sufficient equipment to serve all the different portions of our railroad alike.

Q. I know that, but when you come to the discrimination in the travel between intrastate and interstate on the railroad, there are a good many factors in it. That is the point that I am bringing out now. Some of them are provided better service than others. Some of them provide greater disparity under present conditions than under normal times, but even in normal times there is a disparity there now.

I am not saying that the railroads are not doing the best they can in handling their business, but I am just pointing out this theory that you are presenting here which I know is a part of the law as long as the facts comply with the law you have the facts to which to apply the law, but just the mere fact that a fellow in a few instances or in some instances may ride from Mobile to Montgomery in a coach with a fellow who is going from Mobile to Nashville, then you say that is discrimination. Maybe so. But when you have so many other facts to be considered in con-

nection with the proposal, those things have got to be given consideration too.

A. The question that you mentioned there is not confined to intrastate train service. You will find the same conditions in many instances in interstate train service.

Q. The crowded conditions?

[fol. 1931] A. The equipment.

Q. At this time, of course, it is just a question of hearing what you have to say in connection with the matter. I might say that I have just returned from an interstate trip and I was able to get a space to sleep in, but outside of that, there was plenty of inconvenience, but I was grateful for all the accommodations I did get.

By Mr. Bruce:

Q. When these so-called 2 cent experimental fares went into effect in Official Territory, did some lines in Official Territory refuse to have a part in the increase from 1½ cents to 2 cents,—do you know?

A. Going back from 2 cents?

Q. For the period from 1937, when you went back, you had experimented for years there with 1½ cent fares, the railroads in general throughout the nation, and then in 1937, you went in to increase it from 1½ to 2 cents,—did some of the railroads in Official Territory, for instance, did the Baltimore & Ohio and some others refuse to go along with you on that increase?

A. They never did get down on that experimental basis to 1.5 cents in Official Territory.

Q. There was a loss in the passenger revenue and number of miles and in gross revenue?

A. On the 1½ cents a mile?

[fol. 1932] Q. Yes.

A. That was in Southern Passenger Association Territory only; it did not go into Official Classification Territory.

Q. Then, the nation as a whole did not go into the 2 cent increase except during a tempo[illegible]y period. Did the western district go from 1½ to 2 cents?

A. They never did go to the 1½.

Q. Are you sure of that?

A. Yes sir; there might be an exception in some cases, but there was never a general drop, they maintained the 2 cent fare in Official Territory, in Official Classification Territory, and also in the west.

Q. I think you are wrong in the west. Possibly you want to check that and make a correction in your testimony.

Mr. Oliver: I understand that it never went into effect in Official Territory and that their fares generally were 2 cents.

Mr. Bruce: Oh, I know of some fares that were 1 cent a mile, between certain points in Montana to Seattle and Spokane and later on these fares were increased. They were put in to see if the carriers could regain some of their business. I don't know whether you want to let that statement stand with reference to the Western Territory or not, that they never had 1½ cent fares out there.

Mr. Oliver: I don't know what the witness' knowledge [fol. 1933] is on that subject.

President White: Well, I don't think it would be of much weight here anyway.

Mr. Oliver: I know that the fare in Official Territory was never less than 2 cents, but I can't say as to the west.

Mr. Bruce: You state that?

Mr. Oliver: Yes.

Mr. Bruce: Do you know whether the Baltimore & Ohio in 1937, whether they joined in the 2 cent coach fares when they were to be raised from 1½ to 2 cents?

Mr. Oliver: In the first place, I don't think they ever had a 1½ cent fare on the B&O Railroad.

President White: Cross-examination.

Cross-examination.

By Mr. Bliss:

Q. Do you know how the increase in passenger travel in the South compares with the increase in the rest of the country?

A. For what period of time?

Q. Increase in 1942 over 1941?

A. I would say about the same.

Q. You don't have the figures?

A. No sir.

Q. Do you know how the number of passengers to the car in the South compares with the country as a whole?

A. No sir.

[fol. 1934] Q. You have implied that there were some heavy costs on military movements. Those military trains are pretty well filled, aren't they?

A. They vary. Some are very well filled and others are very, very light.

Q. What do you mean by "light"?

A. Well, we will have a detachment that cannot be handled in a regular train that you must perform a special train service for and there we have a very few passengers on that train.

Q. In a case of a special train, don't you require a minimum?

A. Not for military movements, no sir.

Q. Don't you require certain percentage of freight movement in connection with a special train?

A. No sir, the freight movement does not enter into the military movement with regard to any requirements.

Q. The cars and the trains are very full in those military movements, aren't they?

A. As I mentioned, that varies.

Q. I was referring to the load in the cars, rather than the number of cars in the train.

A. That likewise varies.

Q. What per cent of their capacity would be full on a military movement on an average?

[fol. 1935] A. Well, generally speaking, the army has loaded about three passenges to two double seats; the coaches vary in capacity.

Q. Do you have any study of military movements that indicate that your expenses on those movements are greater than your revenue?

A. Do I have any knowledge of that?

Q. Yes.

A. Well, I am not familiar with just what revenue these troop trains take in in dollars and cents.

Q. You can't then assert that you are losing money on these movements?

A. I can't say one way or the other.

President White: Let me ask this if I may interrupt at this time.

Mr. Bliss: All right.

President White: Is it or not correct that on some of these troop trains that you transport not only passengers but equipment of one sort and another,—isn't that true?

The Witness: It is true in instances, yes sir.

President White: When you report that revenue for carrying equipment, of course, that wouldn't go into your passenger revenue account, would it? Do you know?

The Witness: I am not familiar with the accounting but I can say this, from the passenger standpoint, on troop [fol. 1936] movements, we give them baggage cars to handle their paraphernalia in, and we give them a baggage car to set up as a kitchen, and we get no revenue at all out of those cars.

President White: All right, go ahead.

Q. You mentioned that after the war you expected strong competition from private automobiles to return. Do you anticipate that you will be reducing these fares back to a cent and a half after the war is over?

A. We haven't gotten that far.

Mr. Bliss: That is all.

President White: Any redirect?

Mr. Oliver: No, I believe not, Mr. Chairman.

President White: I have, not an official report here, but it is a memorandum showing or it purports to show the number of special army trains operated and the total number of cars therein and extra cars operated on regular passenger trains and total number of men in all such trains handled on the Southern Railway System Lines by months April, 1941, to October, 1942, inclusive; and the total number of cars is 57,412, and the total number of men is 1,370,833; and the total number of trains, 3,589. Now, it seems there might be some cars included in the car column that would not be a part of these total trains. I rather suspect when this record was made up and the total trains were taken as those trains which were entirely troop trains and [fol. 1937] that total cars would not be only the cars in those troop trains but extra cars according to this advice. There might be additional extra cars that were on regular passenger trains or other passenger trains?

The Witness: I think I gave in my testimony the number of extra cars handled on regular trains during September and October that were used for handling troops.

President White: Any redirect?

Mr. Oliver: No, I have no questions.

President White: Any other questions?

Mr. Oliver: I would like to offer Exhibits 1 and 2, which have been identified by this witness.

President White: They are received.

(Exhibits 1 and 2, Witness Barry, received in evidence.)

President White: I believe we will recess now until 2 o'clock before we go into the testimony of the other witnesses.

(Whereupon, at 12:30 o'clock p. m., a recess was taken until 2 o'clock p. m. of the same day.)

[fol. 1938] Afternoon Session

The hearing was resumed, pursuant to recess.

2 o'clock p. m.

President White: Who is your next witness?

Mr. Oliver: I will call Mr. Simpson.

W. W. Simpson being first duly sworn, testified as follows:

Direct examination.

By Mr. Oliver:

Q. Please state your name, residence and occupation?

A. My name is W. W. Simpson; I reside in Birmingham, Alabama; I am Superintendent of the Birmingham Division of the Southern Railway.

Q. How long have you held your present position and what positions have you previously held with the operating department of the Southern Railway System Lines?

A. I have been in the present position about nine months; prior to that, I had been on two other divisions as superintendent. I started in the operating department 29 years ago and worked in various jobs, including Chief Train Dispatcher and Inspector of Transportation and Trainmaster on several different divisions.

Q. In your present position, over what portions of the lines of the Southern Railway System do you have immediate jurisdiction?

[fol. 1939] A. Between Birmingham and Atlanta, Birmingham and Columbus, Mississippi; and Parrish and Sheffield, Alabama.

Q. In what states do the lines of the Southern Railway System operate?

A. Virginia, North and South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Kentucky, Tennessee, Ohio, Indiana, and Missouri.

Q. And in Illinois? Did you mention Illinois?

A. Yes sir, in Illinois.

Q. Approximately how much mileage does the Southern Railway System operate in Alabama?

A. It is 1331 miles.

Q. Are Southern Railway Company and other Alabama lines confronted with any unusual difficulties and expense in connection with passenger operations under the present day conditions?

A. They are.

Q. Now, will you amplify your answer, leaving out of consideration for the moment troop train movements?

A. Well, we have had increases in wages and other supplies and materials that we need and have to have; we have had to increase our forces, particularly ticket offices, telegraph offices; we have had to open up new offices; had to split the territory of train dispatchers in order to handle the business; our maintenance of way forces have been [fol. 1940] practically doubled; the same thing would apply to shops.

President White: Now, all of these expenses that you are listing would be expenses allocable both to freight as well as passenger revenue?

The Witness: You couldn't separate them, no sir.

President White: I hold in my hand here——

The Witness: Of course, the ticket offices would not be.

President White: No, that is true; it wouldn't be allocated to freight. I hold here a document that is marked "Statement No. M-100, Bureau of Transports, Economics and Statistics of the Interstate Commerce Commission", which purports to show the operating revenue and operating expense of Class I steam railways in the United States and also by the different regions, for instance, the New England region, Great Lakes region, and so on, including two regions, one of which is called the Southern region and the other is called Southern district—the Southern district appears to include somewhat more than the Southern region, but in the Southern region, the ratio of expenses to revenue, per cent ratio, shows the following figures: For

the nine months ending with September, 1941, this ratio which we commonly refer to as operating ratio, is 66.8; for the corresponding period in 1942, the operating ratio is even 60 per cent. So, according to this statement, while [fol. 1941] your expenses in amount of dollars and cents may have increased, your operating ratio is much more favorable for the first nine months of this year than it was for the first nine months of 1941.

The Witness: That also includes freight, of course.

President White: Yes, that is the total operating ratio. Are you in position to exercise judgment as to whether your increase of expense has been more in the freight department or more in the passenger?

The Witness: Well, undoubtedly it is more in the freight.

President White: You mean the increase of expense?

The Witness: No sir, I thought you were talking of the revenue. I am not in position to separate those figures.

Mr. Oliver: Mr. Chairman, we have——

President White: We are talking about per cent increase in revenue, for those two same periods, the per cent increase in freight revenue in the nine months period in 1942 over the corresponding period in 1941 is 41.6, the increase in your passenger revenue with like period being compared is 109.3. In other words, it is more than double.

The Witness: The per cent has; of course, the bulk of the revenue is freight and naturally that, in dollars and cents, would be more than passenger although the per cent is higher in the passenger.

President White: Do you know whether the revenue, the passenger revenue for the first nine months of 1942 as com- [fol. 1942] pared with your freight revenue, occupies a higher or lower per cent ratio than it did for the previous year.

The Witness: I couldn't testify to that.

President White: Well, it is quite apparent from this statement here that the relation of passenger revenue to freight revenue in the Southern region—it shows that for the first nine months of 1941 passenger revenue was $53,000,000 plus, and freight revenue was $418,000,000 plus, —that would be approximately a ratio of 1 to 8, and for the first nine months of 1942 your passenger revenue on the Southern Railway in the Southern region was $112,000,000 plus as compared with freight revenue of $593,000,000,

which would be approximately 1 to 5½, or something like that.

Mr. Oliver: Mr. Chairman, if you please?

President White: Yes.

Mr. Oliver: We have an accounting witness here whom I think probably would be better qualified to answer any questions along that line.

President White: I know, but this gentleman here is undertaking to go into relative expense now as compared with a former period, and Mr. Barry testified something about that too, so I don't know which witness to ask these questions of.

Mr. Oliver: I appreciate that, but this witness is pointing out items rather that come within his observation.

President White: That come within his observation?

[fol. 1943] Mr. Oliver: Yes sir, rather than tabulating it into dollars and cents.

President White: As an operating man?

Mr. Oliver: Yes sir, and Mr. Beight will be able to answer your questions along that line, I believe.

President White: All right.

By Mr. Oliver:

Q. Was it a fact that you put on extra conductors on your trains?

A. We have had to put on additional conductors on all our important trains in the Birmingham Division, and while I haven't jurisdiction over the AGS, they have done likewise on them in order to take care of the heavy travel, which, of course, primarily on the regular trains, is civilian travel, and we are having to use equipment that is owned by other railroads, and it involves additional per diem payments.

Commissioner Harrison: Do you refer to passenger equipment now, or freight?

The Witness: Passenger equipment.

Mr. Bruce: This equipment that you are using at the present time, this passenger equipment, is that primarily due to the fact that you need additional equipment to handle troops?

The Witness: Well, that is true to a certain extent. If it wasn't for the heavy troop movements, we would have [fol. 1944] sufficient passenger equipment to handle the civilian travel.

President White: Has the Southern Railway put on any new local trains? Have they inaugurated any new service since the first of this year?

The Witness: No, sir, not in this section.

Mr. Bruce: The same scheduled trains are running?

The Witness: Yes sir, the same schedules are running but we are operating additional sections.

Mr. Bruce: The same number of trains but maybe additional sections?

The Witness: Yes.

Mr. Bruce: Many of the new trains that you have are troop trains?

The Witness: Yes sir, the largest number of them, of the extra trains, while we do have to run two sections of our new trains several times a week.

Mr. Bruce: And that causes this extra employment that you have had in your train forces?

The Witness: That causes extra employment is a deadhead movement in one direction. Regular trains are set up on schedule and, of course, the travel is more or less balanced in each direction, and when you run an extra train, you have a light movement in one direction to get your power back.

Mr. Bruce: Do you run local extra trains on your local trains to serve intrastate commerce passengers in Alabama?

[fol. 1945] The Witness: Unless it is troops involved.

Mr. Bruce: I mean on a local run between Birmingham and Mobile, you don't put on an extra section on a local train?

The Witness: No, there is not sufficient travel for that.

Mr. Bruce: Then your extra sections that you have had on your regular scheduled trains are interstate commerce trains, your through trains?

The Witness: They are sections in interstate trains.

Mr. Bruce: All right, thank you.

President White: As a matter of fact, isn't the real need for the extra sections due to the interstate travel rather than to local travel on those interstate trains,—isn't that true?

The Witness: It is due to both.

President White: I know it is due to both because you get some local passengers, but Mr. Barry stated in his

judgment—and, of course, we know about how these interstate trains operate because frequently we are called upon to permit them to cut out stations here and there and cut out little towns here and there where they don't serve maybe but one or two towns in maybe between Montgomery and Birmingham or between Montgomery and Mobile on the through trains, in the interstate travel,—as a matter of fact, the need for the operation of the extra sections on those [fol. 1946] trains would reasonably have to be attributed most to the interstate commerce traffic, isnt' that true?

The Witness: I would say the majority of it, yes sir.

President White: Then, if that is true, this question of discrimination that has been brought up about intrastate and interstate, there is another factor to consider in connection with that, is it or not? Maybe I am asking you for a conclusion or for your judgment. I will go ahead.

Commissioner Harrison: You said that you had not added any extra local trains. But, has the Southern Railway taken off any local trains since the emergency started?

The Witness: No sir, I don't think so; I don't recall any.

President White: As I understood it, Mr. Bruce's question was confined since the first of January, and you haven't taken off any since the first of January.

Commissioner Harrison: But you have taken off some since the emergency started, haven't you?

The Witness: When do you consider that the emergency started?

Commissioner Harrison: Do you remember the date when one of your officials came to Birmingham and petitioned us to take off the passenger train between Birmingham and Columbus and we permitted it?

The Witness: That was during the coal strike?

[fol. 1947] President White: No, the chief grounds that you gave there for the removal of that train was the movement of troops and the need of the equipment.

The Witness: I wasn't on the Birmingham Division at that time.

Commissioner Harrison: And you now operate only one train, of course, where you operated two formerly over that line.

The Witness: Was that when they took off one between Birmingham and Meridian?

Commissioner Harrison: And the Columbus train also.

Mr. Bruce: And that was because of the statement that the equipment was needed to handle interstate traffic, was it not?

The Witness: Yes sir, I don't say entirely interstate traffic, but it was troop trains. We have a lot of troops that are handled within the state.

President White: That is true.

Mr. Bruce: So you have less local trains on now than you had on on January 1, 1942, operating in Alabama—that is, some of those trains have been retired?

The Witness: Not January, 1942.

President White: No, not January, 1942, but January, '41.

Mr. Bruce: January, '41?

The Witness: Yes, those local trains handled some inter-
[fol. 1948] state traffic too.

President White: That is true. All right.

By Mr. Oliver:

Q. Now, Mr. Simpson, referring to your extra sections of trains, it is more or less expensive to run a train in two sections than in one section?

A. It is more expensive to run a train in two sections than in one section, because you have an additional crew and you have additional fuel consumption and in addition to that, you have got one more train unit on the railroad which has gotten to be a big factor now in the operation of trains, particularly on single track railroads.

Commissioner Harrison: Do you know any instance in the last three or four months that you have operated two sections on intrastate business?

The Witness: Not exclusively between intrastate points: all of our trains we run two sections on them and they necessarily leave Birmingham and go over into Georgia—that is the terminal for the Birmingham Division, or vice versa. As to the travel on there, I wouldn't know about how much was local and how much was through travel.

Q. They do handle some interstate and intrastate passengers, do they not?

A. Yes sir.

Q. Still referring to your two section trains, would you
[fol. 1949] say the unit cost per passenger is greater when you operate two sections than when you operate one?

A. It would be, definitely.

Q. Explain how that comes about?

A. Well, it is due to the extra expense of operating an additional train; in other words, double your expense, whereas you wouldn't be able to handle that at the same cost that you would handle one train for.

Q. Take the case of where your regular train might consist of twelve coaches and you have four additional coaches, would you operate an extra, or extra section of your train to take care of that travel?

A. We would operate an extra section to take care of it.

Q. How would you divide the number of coaches?

A. We would divide it approximately seven and eight if the travel was such that we could split it up that way. Our ordinary means or method of splitting it up is the head-on cars on one section, and the sleepers and the diners on the others, and by head-on, we mean the mail, baggage express and coaches.

Q. And that would mean that you would be using a full train crew for seven or eight cars in one instance and a full train crew on the regular train which would consist of twelve cars?

A. It is frequently necessary to run two trains on account of one car.

[fol. 1950] Mr. Bruce: Let me ask him a question right there. If you had four passenger cars in one section, wouldn't you have express and revenue tonnage in the section, the second section, to make up for your tonnage? You have a lot of that movement now, haven't you?

The Witness: That is all involved in the passenger business; all of our regular trains have a regular consist including express, baggage and mail.

Mr. Bruce: And you would have additional revenue in addition to the passenger revenue on that train because you would have express cars and vegetable cars or troops onto that *section* section, would you not?

The Witness: As I say, that is included in the regular consist and if we had thirteen cars from the Birmingham Division, we will say between Atlanta and Birmingham, we would operate them in one section; and if we had fourteen, we would possibly double-head; if it got over that, if it got to fifteen cars, we would have to run two sections—

that is for operating reasons—that would include the express and the baggage.

Q. Now, going to your troop train movement, Mr. Simpson, is there any unusual or abnormal expenses in the handling of troop trains?

A. It is; more so than the other trains for the particular reason that the movement is all in one direction and it [fol. 1951] requires a return movement of equipment as a rule and it requires light engines.

Q. When you say return movement, do you mean return empty movement?

A. Yes sir, return empty movement for which we receive no revenue; we have to assemble the equipment at some central location and have it cleaned, iced and watered and then run into the camp and, unfortunately, most of the camps on our railroad, that we serve, are not served directly from the main line, requiring long switch movements into the camp which creates an extra handling.

Q. For which no revenue is involved or received?

A. That is right.

Q. Can you illustrate that by Camp McClelland, for instance, at Anniston, Alabama?

A. At Camp McClelland, we are eight miles from the camp; we have to make a switch movement there of eight miles from Anniston to the camp on cars received from our main line where or when special trains operate over our main lines. We have to handle them with a switch crew up there.

President White: Are you able to say—you are testifying about these expenses, extra service, are you able to say whether the handling of these troop trains either intrastate or interstate is done by the railroad at a loss?

The Witness: I am not able to say, sir.

[fol. 1952] Q. Are there any other items of unusual expense in the handling of troop trains that you don't encounter in the handling of regular trains?

A. Well, of course, we give troop trains right-of-track over other movements, and it delays our freight operations to the extent of running them into overtime and increasing the coal consumption, requiring longer time on line of run and depriving us of the motive power and various other items that we operating people have to contend with when you have a road full of trains as we have on the Birmingham Division.

President White: Would you say that any of the additional expense is brought on on any of the respondent railroads on account of the movement of your local passenger trains in Alabama?

The Witness: Well, as I say, the local passenger trains move pretty well on schedule, and that is all provided for in your operations, and not as much so as it would be with extra trains.

President White: Now, isn't it true, taking all of your testimony into consideration about these additional expenses, additional conductors and other additional expenses that are put on the railroads, that it all grows out of the handling either of troop trains or interstate through trains, rather than from the operation of your local passenger trains? I am talking about local passenger trains. Of [fol. 1953] course, we all know that some local passengers are handled by through trains, but isn't that extra expense largely incident to the operation of either the troop trains or the interstate through trains?

The Witness: I would say both are involved in it.

President White: Of course, both are involved,—I am just asking your judgment,—you are an operating man, as I understand it.

The Witness: We do more troop trains than other local trains.

President White: Don't you have more additional sections on through interstate trains operating right now than you have had in years and years and years?

The Witness: That is right.

Commissioner Harrison: And is it true also that you have fewer local trains in Alabama than you have had at any time in the last five years?

Mr. Bruce: To make it clear for the record——

Commissioner Harrison: Let him answer my question

The Witness: Yes, we have, if you go back that far.

Commissioner Harrison: The L&N Railroad has taken off the local train between here and Birmingham in the last few months, haven't they?

The Witness: I really don't know.

Mr. Bruce: If you didn't have any troop movement at all of any description, would your regular cars be sufficient [fol. 1954] for you to handle the traffic or would you need additional cars at the present time?

The Witness: We would have to run extra sections.

Mr. Bruce: Would that be on your interstate or your intrastate trains?

The Witness: It would be on—as I said, we haven't got any intrastate trains that terminate within the state.

Mr. Bruce: You have local trains, do you not?

The Witness: We have them between Columbus, Mississippi, and Birmingham, Alabama, and we have them between Birmingham, Alabama, and Atlanta, Georgia, but none of them terminate within the state.

President White: Don't you have some passenger trains that operate between Birmingham and Mobile and Mobile and Birmingham?

The Witness: Yes sir, but that is on the Mobile Division.

Commissioner Harrison: You have one that operates from Selma to Demopolis, Alabama, don't you?

The Witness: Yes sir.

President White: There is one that operates between Birmingham and Columbus, Mississippi, which just barely gets over the Mississippi State Line?

The Witness: Yes sir.

Commissioner Harrison: And it is the same way from Birmingham to Meridian, isn't that correct?

[fol. 1955] President White: Between Birmingham and Meridian.

The Witness: But the interstate travel is less productive than the other because there is not as much of that.

By Mr. Oliver:

Q. It is a fact, isn't it, Mr. Simpson, that all of your interstate trains that have been referred to here do handle intrastate as well as interstate passengers?

A. Yes sir; any train that we operate has both intrastate and interstate passengers on it.

Q. Going back to your troop train movement, are there any other abnormal expenses in connection with troop trains that you have not mentioned?

A. It involves a larger inspection force; the handling of cars increases the terminal switching due to the extra trains; and I mean by handling cars, that is in regular trains, they have to be switched at various terminals and routed to some other line or to some other train, they are not always going the same route that the regular train is going. The inspection forces are set up more or less

to protect regular schedules and on extra schedules you have to supplement the services to take care of them.

President White: May I ask counsel if it is the theory of the respondents that the local civilian passengers moving intrastate in Alabama should pay higher fares in order to make up the difference between the fares actually paid [fol. 1956] by the United States Government on troop travel,—is that the theory of the respondents?

Mr. Oliver: No, it is not.

President White: And if so, it appears that your remedy would be to go to Congress which is now imposing a lot of taxes in order to give the farmers parity and a lot of other people parity.

Mr. Oliver: No, I think the passenger revenues of the Southern Railway Company and the other lines operating in Alabama are inflated by the revenue from troop movements, and this witness has pointed out some of the abnormal expenses that are included in the troop movement.

President White: Can you give us your operating ratio on passenger operations for the first nine months of 1941 as compared with your operating ratio on passenger service for the first nine months of 1942?

Mr. Oliver: I will give you some passenger statistics for eight months, Mr. Chairman.

President White: All right.

Q. Now, going back again to the troop movement, are all of the expenses incident to the troop movement reflected in passenger operations or does some of it show up in the freight expenses?

A. Some of it is reflected in freight expenses due to the delays that freight trains might receive by having several [fol. 1957] troop trains on the road, they would naturally have the right of track and would cause the freight crews to run into overtime and consume more coal and, naturally, that expense would be reflected in the freight train operation.

Q. What about the matter of troop trains in terminals,—does it tend to slow up your terminal operation because of the length of the train?

A. Yes sir, it does considerably, particularly at the larger terminals, that we know—the passenger terminals, I am speaking of, at the time they were constructed, we didn't figure fifteen to twenty car trains that we have to handle

in troop movements and, naturally, when they get in the terminal station, the tracks will not hold them, they swing out on the lead blocking the other tracks and practically paralyzing operations, to a certain extent, until you can get that particular troop train out of the shed. They are standing on one track and probably have three or four more blocked on the lead. We are spending a large sum of money now in Birmingham to lengthen the tracks under the shed, and we are putting in a new interlocking plant there to handle longer trains.

Mr. Oliver: That is all.

President White: When you have to make improvements now—you may not know this and maybe some other witness could give us the information on it, but maybe you know about it—where you have to make improvements now be-
[fol. 1958] cause of the war effort and if those improvements would be surplus capacity after the emergency is over, will you not be able to obtain a credit against your federal income tax or some part of it by amortization over a period of five years?

The Witness: I don't know about that.

President White: Maybe counsel or somebody else can answer it.

Mr. Oliver: I think you are correct about that, if it is directly traceable to the war effort.

President White: Yes sir.

Mr. Oliver: That's all for this witness.

President White: Cross-examination.

Cross-examination.

By Mr. Bliss:

Q. Have you abandoned any mileage in Alabama recently?

A. Have we abandoned any mileage in Alabama?

Q. Yes.

A. I don't recall any.

President White: You mean main track mileage, of course?

Mr. Bliss: Yes sir.

The Witness: Yes sir.

Q. You have testified as to certain expenses. Do you know to what extent these are offset by increased revenues?

A. No sir.

Q. You mentioned an example of how the unit cost of [fol. 1959] the passengers might be increased by having to run two trains of seven or eight cars each rather than one train of twelve cars, and now you have mentioned that you have trains of from fifteen to twenty cars.

A. We handle those with freight power.

Q. With freight power?

A. Yes sir.

Q. And in the other instance given, you were handling it with passenger power?

A. Yes sir.

Q. Your troop trains are usually in the fifteen to twenty car brackets?

A. A good many of them; I would say half of them.

Q. Isn't the unit cost lower in operating a fifteen car train than it is in operating an eight car train?

A. It would be if you had more passengers on there, of course.

Q. You spoke about unit cost,—do you know anything about the unit cost today as opposed to last year?

A. Do you mean what the unit is today and what it was last year?

Q. Yes.

A. I don't know what the unit cost was last year, no, I don't know that.

Q. Now, you spoke about leasing equipment from other [fol. 1960] roads. Where are you getting that equipment?

A. We have to call on other roads for it.

Q. Other roads in the South or Northern roads, or what?

A. Mostly Northern roads.

Q. Mostly Northern roads?

A. Yes sir.

Q. Does that mean that you have more passenger business relatively than they do?

A. We are able to get some cars from them all right; I don't know what their business is, but they have been able to help us out with equipment.

Q. What is the per diem on passenger cars that you lease from those Northern roads?

A. It is on a mileage basis; it is from five to ten cents a mile depending on the class of equipment that you get; that mileage basis applies to both loaded and empty.

Q. You testified as to certain increases in the cost of supplies which the carriers buy. Can you give us some more details on those?

A. No sir, I couldn't give you the details, but it is just like the cost of living, everything has gone up in the operation end of the road.

Q. Has the cost of steel rails increased?

A. It has in recent years; I couldn't go back to just the breaking point, but it has increased.

[fol. 1961] Q. Has it increased since 1938 that you know of?

A. I don't know.

Q. Do you purchase any of the supplies?

A. No sir.

Q. Then, you don't know how the prices that you pay are related to the price ceilings established by the Administrator?

A. (No response).

Q. To your knowledge, do the railroads ever complain to the Office of Price Administration that the cost of supplies to them, prices of supplies to the various railroads that they buy was being allowed to increased too?

A. (No response).

Mr. Bliss: That is all.

Mr. Oliver: I have nothing on redirect.

President White: Any other questions from the bench?

Commissioner Harrison: No.

President White: The witness is excused.

(Witness excused.)

Mr. Oliver: Will you come around, Mr. Beight.

J. L. Beight, being first duly sworn, testified as follows:

Direct examination.

By Mr. Oliver:

Q. State your name for the record?

A. J. L. Beight.

[fol. 1962] Q. Give us your residence and occupation?

A. I reside in Washington, D. C.; I am Statistician for the Southern Railway System.

Q. How long have you held your present position and how long have you been in the accounting department of your company?

A. Since August 1, 1933, at my present position, and since May, 1917, in the accounting department of the Southern Railway System.

Q. Have you prepared or had prepared under your supervision or direction certain exhibits which you desire to introduce in this proceeding?

A. I have.

Q. Will you proceed, please, with your first exhibit?

A. Yes sir.

President White: This document will be marked as Exhibit 3.

(Exhibit No. 3, Witness Beight, marked for identification.)

Q. Start with the first page of your Exhibit No. 3, Mr. Beight, and explain what that page is designed to show?

A. Page 1 of Exhibit No. 3 shows for the Class I railroads operating in the State of Alabama, the net railway operating deficit for passenger service for the years 1936 to 1941, inclusive, and the average thereof.

It shows that in each of those years that all of the railroads operating in Alabama had a deficit from passenger [fol. 1963] service.

Q. And your exhibit there is made in accordance with the formula prescribed by the Interstate Commerce Commission, is that correct?

A. That is correct, sir.

Mr. Bruce: Does the Southern Railroad for these same years show anything but deficits on that passenger operation on any part of its system?

The Witness: We do not make any separation as to any part of the system; we would have to analyze as well as the revenue, the maintenance and transportation, and it would be an enormous amount of detail involved to determine that here.

President White: Let me ask you this question.

The Witness: Yes sir.

President White: In obtaining your figure as to the net railway operating deficit, do you include allocated part of return as a part of the deficit?

The Witness: No sir, we do not.

Mr. Oliver: Are you speaking of return on investment?

The Witness: No sir, this deficit represents a difference in the revenue and the railway operating expenses, equipment, joint facility rent, etc., and taxes assignable to passenger service.

Mr. Bruce: Is that a system deficit or a deficit in the operations in Alabama only?

[fol. 1964] The Witness: It is a system deficit.

Mr. Bruce: In other words, Alabama is no different than any other state you operate in? There is a deficit in the other states, too?

The Witness: This deficit is for the entire system with no attempt being made to distribute it to the states.

Mr. Bruce: Thank you.

By Mr. Oliver:

Q. Take up your Page 2.

A. Page 2 shows for the same railroads in Alabama the revenue derived from the transportation of passengers for the years 1936 to 1941, inclusive, and the average of those years.

Q. That is gross revenue from passenger transportation, is it not?

A. Yes sir.

Q. Now, what does Page No. 3 show?

A. Page No. 3 shows the per cent by which account No. 102, passenger revenue, would have to be raised in order to wipe out net railway operating deficit from passenger operations as shown on Page 1 of this exhibit, for each of the Class I railroads operating in the State of Alabama. This is likewise based on the system and not for the State of Alabama alone.

Mr. Bruce: Was that based on a ratio of operating expense against operating revenue?

The Witness: That is operating expenses, taxes, equip-
[fol. 1965] ment and joint facilities rents net assignable to the passenger service.

Q. Referring to the AGS for the year 1941, on Page 2, there is a passenger revenue shown of $1,269,000-odd; on Page 3 for the year 1941, you have the per cent figure of 3 per cent. Does that mean that for the Alabama Great Southern to have broken even on its passenger business

that the figure of $1,269,000 and odd dollars revenue would have had to have been increased by 3 per cent,—is that what you mean?

A. Yes sir, that is correct.

Q. And that is what those figures on that page mean?

A. Yes sir.

Commissioner Harrison: All of these figures are for the entire system and not for the operation in the State of Alabama?

The Witness: Yes sir.

President White: In dealing with passenger revenue, as to Page 2, you have included in that passenger revenue only revenue from a passenger hauled that was wholly intrastate in Alabama, is that correct?

The Witness: Page 2 is the system passenger revenue.

President White: Oh, yes, that is the system passenger revenue?

The Witness: Yes sir.

Commissioner Harrison: Have you prepared a similar exhibit with reference to passenger operating expenses as [fol. 1966] you have on Page 2, your passenger revenue?

The Witness: No sir, I have not.

Commissioner Harrison: Why didn't you attach that so that we could make a calculation if we saw fit to.

The Witness: Yes sir, but the calculation can be made from the net railway operating deficit.

Commissioner Harrison: But you haven't any exhibit showing the operating expenses over your system so far as the passengers are concerned?

The Witness: No sir.

Mr. Oliver: That could be arrived at, Mr. Harrison, by adding, or, rather, deducting from the figures on Page 2 the figures on Page 1.

The Witness: That could be arrived at by adding to the figure on Page 2 the deficits shown on Page 1 in order to arrive at the expenses assignable to passenger service.

Commissioner Harrison: This does show that your revenue practically doubled in 1941, the AGS, for 1942 over 1941?

The Witness: Yes sir.

Commissioner Harrison: But you didn't come here in 1940 and ask for any increase in passenger fares, did you?

The Witness: No sir.

Mr. Bruce: While you are on that subject, I am going to ask you if these figures represent a total earning on your passenger trains, or is that only the passenger earnings itself?

[fol. 1967] The Witness: That does represent, with respect to passenger runs, that represents the entire passenger operations, passenger and allied services.

Mr. Bruce: Would that include express and mail and cream and milk?

The Witness: Yes, and the figures on Page 2 represent transportation of passengers only.

Q. Now, will you explain Page 4, please?

A. Page 4 shows for the Class I railroads in Alabama, the total system mileage operated as compared with the mileage operated by those companies in Alabama for the years 1936-1941, and the average thereof.

Page 5——

Commissioner Harrison: Now, let's see on Page 4, your total number of miles operated in Alabama of these Class I roads was less in 1941 than they were in 1940.

The Witness: Yes.

Commissioner Harrison: But their revenue practically doubled in the same period of time, didn't it?

The Witness: Yes sir.

Commissioner Harrison: All right.

The Witness: Page No. 5 shows for Class I railroads operating in the State of Alabama, net railway operating deficit from passenger operations per mile of road operated as close of year, average year of six, 1936-1941; and on the [fol. 1968] righthand side of Page 5 it shows the total miles operated in Alabama multiplied by that deficit in order to determine a comparison of the deficit in Alabama with that for the total system mileage for each of these roads.

This comparison shows for the entire line a net railway operating deficit per passenger, per mile, of $787, and for the State of Alabama, $850.

Q. That is per mile?

A. Yes sir, that is per mile. I think I stated that it was per mile.

Q. In arriving at your deficit in Alabama, you have used system averages per mile, have you not?

A. Yes sir; what each shows with respect to all Class I railroads in the Southern region for the years 1921 to 1941, and the average year thereof, the rate of return of 3.07 per

cent, as compared with, for the average year, 1931 to 1941, inclusive, 2.11 per cent. It further shows that for the average year from 1921 to 1941, that the net income was $32,226,000 as compared with, for the average year 1931-41 a net deficit of $1,941,000.

Commissioner Harrison: Let me ask him something, please. How did you explain, or I wish you would explain for me, please, on Page 5, at the bottom, of page, you have the total under the per mile operating deficit for the entire line is $787, and you have $850 per mile net railway operating deficit apportioned to Alabama,—will you please ex-
[fol. 1969] plain that for us?

The Witness: With respect to the portion of Alabama, the mileage relationship for Alabama, the same mileage relationship does not exist for the State of Alabama as it does for the entire line.

Commissioner Harrison: How did you arrive at the figure of $850 as the per mile deficit apportioned to Alabama?

The Witness: We divided the total miles in Alabama into the total accumulations based on the production for months for each railroad.

Commissioner Harrison: You just added all of those months up and divided it by the number of roads, is that correct?

The Witness: Yes sir.

Commissioner Harrison: And the same thing with regard to the date?

The Witness: Yes sir.

Commissioner Harrison: That has nothing to do with the revenue of each one.

The Witness: We try to bring out this comparison in the State of Alabama by assigning the deficits——

Commissioner Harrison: If all of these lines operated the same number of trains over your entire system on the date, then your total would have been identically the same?

The Witness: Yes sir.

[fol. 1970] Commissioner Harrison: So, it doesn't mean anything at all, does it?

The Witness: It is merely to bring out the deficits for the amount of runs.

Commissioner Harrison: You have taken the AGS as 315 miles to entire line and the next figure is 639 for the AB&C, and so on down the line, and you have added those

revenues together and those other figures together to get the total and then divided it out, is that it?

The Witness: Yes sir.

Commissioner Harrison: And that doesn't mean anything as to whether the roads are operating in Alabama at a loss or a profit, does it?

The Witness: No sir.

Mr. Bruce: Your operating cost is not the same in each one of these states that you operate in, is it?

The Witness: We have not made any effort to determine that; there are so many compilations involved that it would be almost an impossibility to determine the cost in the various states. There are none of the railroads that have set their accounts up so that that could be readily determined.

By Mr. Oliver:

Q. You have been dealing with the figures on Page 5. Page 6 shows revenue and expenses and net income not only for passenger operations but freight as well?

[fol. 1971] A. Yes sir, that is the total freight and passenger.

Q. All right, the next page?

A. Page No. 7 shows for these same railroads the investment in railway property used in transportation service, including cash and materials and supplies as reported annually to the Interstate Commerce Commission; the net railway operating income and the rate of return for the average year, 1921 to 1941.

This particular statement shows that during this period, the AB&C had a deficit of 1.28 per cent, and it also shows that the rate of return for the Alabama Great Southern over that period of time was 4.37 per cent.

Commissioner Harrison: And on Page No. 6 of your Exhibit No. 3 it shows that for the year 1941 your earnings and net income were 4.24 per cent on your investment, does it not?

The Witness: Yes sir.

Commissioner Harrison: And in 1938, there was a deficit of 1.9 per cent.

The Witness: No sir, it was an income net 1.9, that is before net income. After the fixed charges were paid, then they had a deficit of $9,734,450.

Commissioner Harrison: You had a deficit of $9,734,450, and in 1941, you had a net of $74,485,799?

The Witness: Yes sir, that is for all the railroads operating in the Southern region.

[fol. 1972] Commissioner Harrison: Then, you would say from those figures that the railroads need any additional revenue?

The Witness: Yes sir, they do.

Commissioner Harrison: To pay expenses?

The Witness: Yes sir.

Commissioner Harrison: And that is the basis of this application?

The Witness: Of course, we say that as to these times, they are abnormal, and we don't expect them to continue.

Mr. Bruce: Page 7, in your first column, are these figures shown there the investment in railway property used in transportation service? Are these the book values of these different railroads, or is this based on the Commission's valuation?

The Witness: No sir, that is book value.

Mr. Bruce: Do you know what the difference is between the book value and the Commission's valuation?

The Witness: I know that there is some difference, but I can't give you the details about it. I know that these figures have been revised to conform to Tariff 211-N which is a new tariff effective in January, 1936.

Mr. Bruce: These figures shown here are not permitted to be used as figures for rate making purposes?

The Witness: I am not familiar with that.

Mr. Bruce: You are not familiar with that?

[fol. 1973] The Witness: No.

Mr. Bruce: I will ask you the question if the Commission's figures are the ones that are used in rate making?

The Witness: I don't know.

Mr. Bruce: Or don't you know?

The Witness: No sir, I do not know.

President White: Now, on Page 6 it appears that your authority for those figures is not the records of the Interstate Commerce Commission but that those are some of the figures from the Bureau of Railway Economics of the Association of American Railroads, is that correct?

The Witness: With respect to the investment, the Interstate Commerce Commission, in 211-N asked the carriers to make *no* change in the investment figures reported in their

annual report for 1936 and 1941, and the Association of American Railroads wrote to all carriers all over the United States and asked them if they would rather state their investment account to conform to the Table 211-N.

President White: These figures in Column 7 are the book values of these respective companies?

The Witness: Yes sir, they are the book values, but they are shown in the annual reports as I have stated, to the Interstate Commerce Commission from 1936 to 1941, and they have been adjusted back to 1921 to correspond with the figures that are currently reported.

[fol. 1974] Mr. Bruce: Are you familiar with the valuation cases?

The Witness: No.

Mr. Bruce: All right, that's all.

President White: Referring to Page 7, do you now if any other line in the territory of the AB&C is operated with a similar return on its investment?

The Witness: No sir, I do not, sir; they worked up those figures, but I did not investigate to see what details were involved and did not look to see if there had been any income on it.

President White: All right.

The Witness: Now, with respect to Page 8 of my Exhibit No. 3, we show here the system miles, the rate of return and the weighting, and we show here again information somewhat similar to that shown on Page 5, whereas after a weighting, the rate of return shows 2.94 as compared with 3.08 for the State of Alabama,—the figure 2.94 representing the entire line.

Mr. Oliver: Are these figures combined from what you have shown on those roads on Page 7, this average?

The Witness: Yes. With respect to Page 9, here again we show the system mileage, and the full cost ratio, that is the ratio expenses, equipment and joint facilities rent and taxes and 5¾ per cent return on the investment and that full cost ratio has been weighted with respect to the entire [fol. 1975] line and with respect to the mileage operated in Alabama.

The full cost ratio for the entire line, weighted is 114, and in the State of Alabama, it is 113 per cent.

Mr. Bruce: That is based on system average also?

The Witness: Yes.

Mr. Bruce: The division of the mileage and complete freight revenue and division and the setup per mile, and then allocating it to the mileage applicable in Alabama?

The Witness: Yes.

By Mr. Oliver:

Q. When you speak of full cost ratio, do you refer to 5¾ per cent return on the investment?

A. Yes sir, on the property used in transportation service, plus cash and materials and supplies.

Q. Am I correct in my understanding that with reference to the Southern Railway Company, for instance, where you show ratio for the entire line of 111 per cent, that that means that the revenue of the Southern Railway Company would have had to have been increased by 11 per cent to have enabled them to earn the return of 5¾ per cent on their investment for this period?

A. Yes sir.

Q. Now, take up the next page.

A. Page No. 10 shows the elements of value of property used in common carrier service as of January 1, 1940, as [fol. 1976] determined by the Interstate Commerce Commission. Basis A shows the production cost; and Basis B shows the reproduction estimate. In the last two columns, the capital outlay represents Basis A or the production cost plus lands and working capital. Basis B represents the reproduction estimate plus lands and working capital.

At the bottom of this page is shown the ratio of 113 per cent reproduction estimate as compared with production cost and with respect to the capital outlay that ratio on Basis B 112 per cent is shown as compared with 100 per cent on Basis A

President White: Now, in your case, under the column headed "Basis A", has there been any deduction for depreciation?

The Witness: No sir

President White: And that also applies to Basis B?

The Witness: Yes sir

President White: And that also applies to the two columns as to capital outlay, cost of production for depreciation?

The Witness: No.

Mr. Bruce: Does that include maintenance, repairs and upkeep?

The Witness: Yes, that would include them, yes sir.

Mr. Bruce: The railroads don't base that upon the depreciation, do they?

The Witness: No.

[fol. 1977] Mr. Bruce: In other words, take a passenger car, if it cost $45,000, it remains at $45,000 and nothing is set aside to cover that passenger car at the end of its life?

The Witness: They do have depreciation with respect to passenger equipment.

Mr. Bruce: What do you do with this depreciation?

The Witness: We charge that off to expenses.

Mr. Bruce: That becomes a deficit?

The Witness: No sir.

Mr. Bruce: Is the permissive power granted to the railroad in the Transportation Act of 1940 to set aside a certain fund for depreciation, or do you know?

The Witness: I think so.

Mr. Bruce: And you start building up that depreciation from this year, is that right?

The Witness: Yes.

Mr. Bruce: Thank you.

By Mr. Oliver:

Q. Your next exhibit, Mr. Beight, which will be No. 4 for identification.

(Exhibit No. 4, Witness Beight, marked for identification.)

Q. Will you please proceed?

A. My next exhibit, No. 4, shows at the top for the Southern Railway Company for the eight months ended August 31, 1941, and '42, respectively, the total railway [fol. 1978] operating revenues, expenses, tax accruals, etc., for both the freight and the passenger service.

This exhibit shows an operating ratio, excluding taxes and rents, for the eight months of 1942 ended on August 31st of 58.45 per cent as compared with 62.73 per cent in 1941.

It likewise shows after including taxes and rents, that the operating ratio for that same period in 1940 to a 77.79 per cent as compared with 76.54 per cent in 1941.

President White: Now, what taxes have you included in determining the operating ratio where you included taxes and rents? What taxes have you included?

The Witness: With respect to 1942 we made a determined effort to comply as far as possible with the new law.

President White: We are not advised about all the ins and outs of the new law. Will you please tell us?

The Witness: I do not know; the tax department worked those figures up.

Mr. Bruce: The railroads are not permitted to use their tax figures or interest in arriving at an operating revenue, is that right? This Transportation Act of 1940 gave you the right to include your taxes as an expense against your operating ratio, is that right?

The Witness: I didn't get that question.

Mr. Bruce: In other words, prior to the passage of the 1940 Transportation Act, in computing your ratio of earn-[fol. 1979] ings against expenses, you could not include taxes, the taxes are set aside and they came out of your net operating income?

The Witness: Yes.

Mr. Bruce: And in 1940, the Transportation Act of 1940 gave you the benefit of attaching onto your expense your taxes, is that right?

The Witness: Yes sir.

President White: All taxes?

Mr. Bruce: All taxes.

Mr. Bliss: What section of the Act is that in, do you know where that section of the Act is found or where that provision in the Act is found?

Mr. Bruce: Well, I don't remember exactly where it was set out. I was in Congress when that thing passed.—well, I wouldn't say exactly in Congress, but I was before the Committee. Now, the main items that entered into this, your ratio there for the first eight months of '42 was 56.45 for while a like period in '41 is 62.73—is the fact that in that year the taxes were not included in the ratio—and in 1942 you are permitted to do that, isn't that the explanation of it?

The Witness: Yes.

Mr. Bruce: Now, the taxes might include, for instance, your employees, your contributions toward the Retirement Fund that you have paid at the present time under and by [fol. 1980] virtue of the Railway Retirement Act?

A. Yes sir.

Mr. Bruce: And it might include that part that you deduct

from your payroll from the employees' salary that you pay the Federal Government for them, is that right?

The Witness: Yes.

Mr. Oliver: I didn't get your question there. I didn't understand you. Did you say there were no taxes included in it or did you ask if any taxes were included in the 1941 figures here where it is an operating ratio?

Mr. Bruce: No taxes in 1941 came in. In other words, they were deducted from your net revenue but since 1941, they have become a part of your expenses.

President White: The question of whether you are correct, the figure here, operating ratio, including taxes and rents is shown to be 76.54 for the first eight months of 1941 and for the like period in '42 it is just 1.25 per cent higher.

Mr. Bruce: That makes the difference between the deficit. In other words, if you take the taxes out, that is where the difference has been in the past year, the increase in taxes and rents, this year, right here, you have got it on Sheet M-100, in 1941, the railroads for the Southern District paid $15,214,000 plus and in 1942 they paid $18,390,000, and that is on account of excise taxes and so forth which is divided equally between the employer and the employees. [fol. 1981] Isn't that right?

The Witness: Yes sir.

Mr. Bruce: They pay 50 per cent each and that increased your tax proportion this year. '41 was the first time these taxes were permitted to be charged as an expense against operating net, is that right?

The Witness: Well, that is my understanding of it. Of course, I am not really as familiar as I should be with it that comes under their tax department; they have given me a figure that represents with respect to the eight months in 1942 as nearly an accurate a figure as they can in respect to the taxes, as I understand it.

Mr. Bruce: Sheet M-100 shows that,—it shows a great increase there in 1942 against '41 in taxes.

The Witness: Yes.

Mr. Oliver: Mr. Chairman, may I interrupt for just a moment?

President White: Yes sir.

Mr. Oliver: Mr. Simpson is very anxious to get back to Birmingham, and if there are no further questions for him, I would like to have him excused at this time.

President White: Is there any objection to Mr. Simpson being excused at this time?

(No response.)

President White: You are excused, Mr. Simpson.

[fol. 1982] If you will look at Exhibit No. 4 itself, in the figures at the top of the sheet, under the heading "Total railway tax accruals" for the first eight months of 1941, it was $10,085,242, and for the like period in 1942, it was $22,489,579.

Mr. Bruce: And in 1942, you have these various excise taxes and also the Railway Retirement Act and Unemployment Act, which is ratified with the Act itself, and the Commission with an executive order, an administrative order, permitted the railroads to include that in their expenses, that is, the taxes in their expenses starting with this year.

Commissioner Harrison: How much of this $22,000,000 item that is set up for accrual of taxes have you estimated as the income tax to be paid on your net income?

The Witness: We don't show that separately, sir; we do show a separation of net income as it exists, with the information as between the railway tax accruals and federal stock tax on the one hand and with respect to federal and state income and capital stock tax on the other, and I will offer that data in a moment.

I want to say that the lower portion of my Exhibit No. 4 shows selected passenger revenue and traffic statistics for the seven months' period ended July 31, 1941, and for a like period in 1942.

We selected the seven months for this lower portion inasmuch as at the particular time the statistics for the [fol. 1983] eight months were not available as to the Southern Railway Company and the AGS.

These exhibits are offered for the Southern Railway Company, the AGS Railroad, the Atlantic Coast Line, the Seaboard Air Line and the Central of Georgia Railway Company.

By Mr. Oliver:

Q. With respect to the Atlantic Coast Line and the Central of Georgia and the Seaboard Air Line Railway, where did you get the figures you have in the statement?

A. They were furnished to us by those respective railroads...

Q. By the accounting departments of those railroads?

A. Yes sir.

President White: On Sheet 1 of Exhibit No. 4, your average revenue per passenger mile in cents, first in coach, other than commutation, you have arrived at a figure for 1941 of 1.411, and for the same period in '42, you have arrived at a figure of 1.418. Have you included in that figure the passenger miles of transporting men in uniform of the Army and Navy and Marine Corps, and others who are entitled to travel on lower fares?

The Witness: Yes sir, we have.

President White: As well as troops transported in troop trains?

The Witness: Yes sir, we have included all passengers.

President White: And, of course, the average revenue [fol. 1984] per passenger mile for civilian travel would, consequently, be substantially higher than the figure shown here, is that correct?

The Witness: Yes sir.

Commissioner Harrison: In glancing over these figures, I notice that the Southern Railway, that their revenue has increased perhaps 50 per cent in 1942 over 1941, is that about correct?

The Witness: Yes sir.

Mr. Oliver: It is almost 100 per cent.

The Witness: That is the gross revenue.

Commissioner Harrison: I am talking about the gross.

The Witness: Yes sir.

Commissioner Harrison: And the AGS revenue has increased practically 100 per cent?

The Witness: Yes sir.

Commissioner Harrison: And the Atlantic Coast Line has decreased some 50 per cent?

The Witness: That is just the reverse,—that is prepared the other way.

Commissioner Harrison: It has increased 50 per cent?

The Witness: Yes sir.

Commissioner Harrison: And the same applies to the Seaboard Air Line Railway?

The Witness: Yes sir.

[fol. 1985] Commissioner Harrison: And the same applies as to the Central of Georgia Railroad?

The Witness: Yes,——

Commissioner Harrison: With a lower percentage?

The Witness: Yes sir.

Commissioner Harrison: Is it a fact or not that the AGS has 83 per cent of its mileage as shown on your Exhibit No. 4—on Page 5—of its mileage in Alabama?

The Witness: Yes sir.

Commissioner Harrison: And all of these other roads only have a very small per cent of their miles of railroad in Alabama?

The Witness: Except as to the Southern Railway Company.

Commissioner Harrison: The Southern Railway Company has 6,640 miles on its system and only 1023 miles in Alabama?

The Witness: Yes sir.

Commissioner Harrison: According to this exhibit?

The Witness: Yes sir.

Commissioner Harrison: Then, wouldn't you say this exhibit, on its face, shows that the passenger business in Alabama was very much more profitable than it was on all of the lines that run outside of Alabama of the Southern Railway System?

Mr. Oliver: Those are gross figures, you must bear in mind.

[fol. 1986] Commissioner Harrison: I am talking about gross passenger fares.

Mr. Oliver: You were speaking of profit, you said profit.

Commissioner Harrison: I meant the gross passenger revenue.

The Witness: As I say, we don't show anything in here with respect to the total revenue earned in Alabama except by allocation.

Commissioner Harrison: But all of your exhibits are estimates on your system?

The Witness: Yes.

Commissioner Harrison: But it so happens that the AGS operates almost exclusively in Alabama?

The Witness: Yes.

Commissioner Harrison: And, therefore, their earnings must have all been earned in Alabama?

The Witness: Yes, the substantial part.

Commissioner Harrison: Well, 83 per cent of their mileage is in the State of Alabama.

The Witness: Yes.

Commissioner Harrison: And their passenger revenue increased 100 per cent in that year?

The Witness: Yes. However, with respect to the AGS, that is a bridge carrier, and most of those passengers would possibly be delivered to them by other carriers or [fol. 1987] delivered to them by other carriers for a longer haul by other passenger carriers, I would say either by the C&O and TP or the Southern Railway or the NO&NE.

Commissioner Harrison: Where does the AGS start?

The Witness: It starts at Birmingham and goes to Meridian, and some of the passengers were properly delivered to it by the NO&NE.

Commissioner Harrison: It could be?

The Witness: Yes sir.

Commissioner Harrison: But the fact is that the Central of Georgia Railroad's revenue is only increased three million dollars and the Central of Georgia has 1879 miles of railroad on its system and only 508 in Alabama?

The Witness: Yes.

Commissioner Harrison: If they got the same per cent in Alabama on busines as the AGS did, their revenue would be jumped up 100 per cent, wouldn't it?

The Witness: As I have said, I believe that the business of the AGS, that is the majority of it is delivered to that railroad from New Orleans or Cincinnati or from some point on the Southern Railway.

Commissioner Harrison: Now, you are just merely guessing at that, aren't you?

The Witness: As I have said, the AGS is a bridge carrier and it doesn't have an enormous amount of business [fol. 1988] locally, but it is mostly by passengers being transported to New Orleans or Cincinnati or from those points; it is mostly a bridge carrier, as I have stated.

Commisioner Harrison: Well, they did so much business that they asked us to take off the local trains, is that right?

The Witness: I don't know about that.

Commissioner Harrison: They did that and here is the record where they did it. It is Docket No. 8212.

Mr. Bruce: Now, take the Alabama Great Southern Railroad Company sheet.

The Witness: Yes.

Mr. Bruce: And your Account No. 102, passenger revenue, I notice in 1941 that it showed passenger revenue, coaches, other than commutation, $294,767, and in 1942, for a like period, it shows $595,614,—does that line have any camps located on its mileage?

The Witness: I believe it does, but I am really not familiar with that, sir.

Mr. Bruce: Does anybody know about that?

Mr. Oliver: Mr. Barry, are there any camps on the AGS Railroad line?

Mr. Barry: There are no large camps on the AGS Railroad.

President White: Off the record.

(Discussion off the record.)

Mr. Oliver: At this point, I would like to have Mr. Barry [fol. 1989] answer Mr. Bruce's question with regard to whether or not there are any camps on the line of the AGS Railroad whose troop movement might be reflected.

Mr. Barry: There are no military camps on the AGS Railroad and the troop movements that are handled by the AGS Railroad are delivered to them at Chattanooga, Birmingham or Meridian for through movement beyond, or originating beyond.

Mr. Bruce: It will be connecting line movement then?

Mr. Barry: Yes sir.

Mr. Oliver: Do you think that the Camp Shelby movement is responsible for inflating somewhat the AGS revenue?

Mr. Barry: That is a very sizeable amount, but there are others that are to be considered, too.

President White: How does Camp Shelby compare with the camp at Anniston on the Southern?

Mr. Barry: It is much larger, maybe double; in addition, there is a great volume of military movement that goes to New Orleans and west going down the AGS.

Commissioner Harrison: Isn't Anniston the concentration point for all of Alabama?

Mr. Barry: Anniston is the concentration point for troops moving in and out of Ft. McClellan.

Commissioner Harrison: All of the draftees in Alabama, aren't they required to go into Anniston for physical examination?

[fol. 1990] Mr. Barry: Oh, no, not all of them.

Commissioner Lee: I think most of them from this section go to Ft. Benning, Georgia.

Commisioner Harrison: Don't all of them from Western Alabama go to Ft. McClelland at Anniston on the Southern Railway,—that is, all of the draftees?

Mr. Oliver: Do you know, Mr. Barry?

Mr. Barry: I can't answer that as to the dividing line; I know that they are divided as to the different fields when they are constructed.

By Mr. Oliver:

Q. Now, Mr. Beight, will you take up your next exhibit?

President White: This exhibit will be marked No. 5.

(Exhibit No. 5, Witness Beight, marked for identification.)

The Witness: My Exhibit No. 5 has been prepared for the Southern Railway Company, The Alabama Great Southern Railroad Company; the Atlantic Coast Line Railroad Company; the Seaboard Air Line Railway and the Louisville & Nashville Railroad Company.

This exhibit shows the total operating revenue, total operating expenses and so forth, separated as between freight and passenger service for the eight months ended August 31, 1942. Such separation is both as to revenue and expenses, etc., having been made in accordance with the formula of the Interstate Commerce Commission.

[fol. 1991] This exhibit, with respect to the Southern Railway, shows on Line 10 a net railway operating income from passenger service of $4,648,530; it likewise shows the net railway operating deficit from passenger and allied service for the years 1936 to 1941, an amount aggregating $23,907,770, or a net operating deficit from passenger service for those 6⅔ years of $19,259,240.

At the lower portion of the statement will be shown the investment in railway property used in transportation service as reported to the Interstate Commerce Commission; cash, material and supplies, and total as of December 31, 1941, and there is shown the return for one year at 5¾ per cent, and also the return for the eight months' period ended August 31, 1942.

This portion of the statement shows that after providing a return on investment, and the passenger portion of the total investment, that there is a net deficit from passenger operations as shown on Line 25 of $184,054.

Q. And as shown on Line 17, in arriving at the return, you have used 5¾ per cent as the basis of the return?

A. Yes sir.

Mr. Bruce: Under Line 22?

The Witness: Yes sir.

Mr. Bruce: The heading "Allowance for return on investment, 81 per cent",—what is that 81 per cent?

[fol. 1992] The Witness: That 81 per cent represents what is left of the revenue assigned to passenger service as shown on Line 1 after providing for return on investment.

Mr. Bruce: That is Line 1 less what?

The Witness: Line 1 less 19, or 19 per cent of the passenger revenue to provide for return; in other words, the return, when considered from an angle of both freight and passenger represents 19 per cent of the total freight and passenger, so we have deducted 19 per cent from the gross revenue assignable for passenger service.

Mr. Bruce: That 19 per cent would be based upon the book value or upon the Commission's valuation?

The Witness: Yes sir; the book value.

Mr. Oliver: The figures for the other companies shown on this exhibit are arrived at in the same manner that you describe as to the Southern Railway?

The Witness: Yes sir. I might call your attention to the exhibit prepared by the accounting department of the Seaboard Air Line Railway,—in those two years there is shown net income from passenger operations of approximately two million dollars. I am advised by the Seaboard Air Line that they have not as yet made an attempt to include anything for federal and state income taxes and federal capital-stock tax because they said it would be rather difficult now and they couldn't make any fair estimate.

[fol. 1993] Mr. Bruce: In other words, these taxes are not due yet.

The Witness: The Seaboard Air Line Railway has not made any accrual as to those specific tax figures, according to their information given to me.

Mr. Bruce: Don't you set aside a monthly allotment from your earnings for tax payments?

The Witness: Yes sir, and we have shown them for the Southern Railway and for the AGS.

Mr. Bruce: And when these taxes come due, the deduction has been made as to your net?

The Witness: Yes, and the Southern and all other lines except the Seaboard——

Mr. Bruce: On a monthly basis?

The Witness: Yes.

Mr. Bruce: Have you reported that to the Interstate Commerce Commission monthly?

The Witness: Yes sir.

Mr. Bruce: Therefore, your item of taxes there coming due in November or December, so far as the state is concerned, except income, and the income is estimated on the amount, is already set aside to cover the taxes when due?

The Witness: Yes, and income, too, with respect to the Southern Railway Company has been adjusted.

Mr. Bruce: On last year's payment?

The Witness: Yes.

[fol. 1994] Mr. Bruce: I see.

(Exhibit No. 6, Witness Beight, marked for identification.)

By Mr. Oliver:

Q. Now, Mr. Beight, will you take up your next exhibit, which has been marked for identification as Exhibit No. 6?

A. My Exhibit No. 6 has been prepared for the Southern Railway Company, The Alabama Great Southern Railroad Company, the Atlantic Coast Line Railroad Company and the Seaboard Air Line Railway.

This exhibit shows the passenger revenue for the years 1937 to 1941 and for the first seven months of 1942 as compared with the corresponding period in 1941. It shows passenger revenue separated as between coach traffic and pullman traffic, and the same separation with respect to passengers carried one mile, and the revenue per passenger per mile. It also shows at the lower portion the intrastate revenue as reported by the Southern Railway Company to the various states through which it operates.

It shows with respect to Alabama, comparing 1941 with

1940, an increase in the intrastate business of 20 per cent, and——

Q. Roughly stated, it is 19.91, isn't it?

A. 19.91, yes sir, and comparing the seven months in 1942 with the corresponding period in 1941, an increase in intrastate business of 70.18 per cent.

[fol. 1995] Mr. Bruce: That is based on actual figures or system average?

The Witness: That is based on intrastate revenue as reported to the State of Alabama on the Southern Railway Company's annual report to the State of Alabama, and that is actual.

Mr. Bruce: On the top of your first page, the top section, at the bottom, before the last line, seven months in 1941, you show above that increase seven months 1942?

The Witness: Yes sir.

Mr. Bruce: And across there you show $4,900,042 and under that you show 118.83 per cent,—does that mean 118.83 per cent increase for these seven months in 1942 over 1941?

The Witness: Yes sir, in the gross revenue.

Mr. Bruce: And you have a corresponding increase in the pullman, total revenue from Pullman cars, and you have an increase for these seven months of 114.50 per cent, or a total for both coach and pullman of $8,722,899 or 116.45 per cent?

The Witness: Yes sir, that is for both coach and pullman.

Mr. Oliver: Now, Mr. Beight, the statements for the other roads which follow are made up in exactly the same way, are they not?

The Witness: Yes sir.

Mr. Oliver: You may cross-examine.

The Witness: That is one point that I would like to [fol. 1996] bring out with respect to Statement M-100. You asked about the passenger operating ratio. I would be rather difficult for the entire railroad to develop a comparison of operating freight ratio and passenger ratio because the expenses of each carrier would have to be distributed as between freight and passenger in accordance with the Commission's formula. However, for this particular case, the lines in the Southern region, the Southern Railway and the AGS and the Atlantic Coast Line and the Seaboard Air Line and the L&N, I have been able to work

out from what figures I have here the total ratio and the freight operating ratio and the passenger operating ratio. That, of course, is the gross revenue divided into the railway operating expenses solely.

Mr. Oliver: That is before taxes or rents?

The Witness: Yes sir, that is before taxes or rents. As an illustration, on the Southern Railway Company, the total operating ratio for the eight months in 1942 is in round figures 58 per cent; the freight operating ratio is 57 per cent; the passenger operating ratio is 66 per cent. We will make it 65 per cent. On the AGS Railroad Company, the total operating ratio is 52 per cent; the freight operating ratio is 50 per cent; the passenger operating ratio is 64 per cent.

On the Atlantic Coast Line, total operating ratio——

President White: These are all figures for the first eight months of 1942?

[fol. 1997] The Witness: Yes sir; total operating ratio 58 per cent; freight operating ratio 54 per cent, and passenger operating ratio 71 per cent.

For the Seaboard Air Line Railway, total operating ratio 61 per cent, freight, 60 per cent, passenger, 63 per cent.

For the L&N Railroad Company, total operating ratio 61 per cent, freight, 57 per cent, and passenger, 79 per cent.

Now, as I say, we have these figures readily available in view of the fact each of these carriers has made an actual separation of their revenue and expenses in accordance with the formula prescribed by the Commission, and, therefore, we have been able to determine just what the ratios are for the eight months.

President White: You haven't figured out the ratios for the corresponding period in 1941?

The Witness: No sir, we would have to break down the revenue and expenses.

Commissioner Harrison: How did they arrive at the revenue of passenger fares in Alabama? Did they not just take a total revenue for the system and divide that by the number of miles?

The Witness: No sir, I believe that is actual, as audited by our passenger department in Atlanta. In other words, that is what is shown in the back part of the annual report to Alabama—one column is headed intrastate and the

other column is headed interstate, and the other one is [fol. 1998] the total, and this (indicating) is the intrastate portion only, but I think those are the actual intrastate figures.

Commissioner Harrison: If you will look at it closely—I am not saying they are not correct about that, but just at a glance I would say the mileage in Alabama was 15 per cent of the system mileage and the revenue that you show for Alabama is 15 per cent of the system passenger revenue. It may be just a coincidence.

The Witness: It would be, I believe.

Commissioner Harrison: They seem to be the same.

President White: That probably wouldn't have much weight in this case. Where your system operates in Illinois, it shows that in 1941 you had less intrastate passenger revenue than you had in 1940.

The Witness: Yes sir.

President White: That is the only state where I see that that occurred.

The Witness: Yes sir, that is right, sir.

President White: That is what I was referring to.

Mr. Oliver: I would like to offer at this point Exhibits 3 to 6 inclusive, which have been identified and discussed by the witness.

President White: Exhibits 3 to 6, inclusive, will be received in evidence.

(Exhibits 3 to 6, inclusive, Witness Beight, received in evidence.)

[fol. 1999] Mr. Bruce: That means that the passenger dollar, for instance, in 1941, in these ratios, the revenue dollar that came from freight or passenger, that 66.8 cents of that dollar was used in operating expense, is that right?

The Witness: That is right. What exhibit is that on?

Mr. Bruce: It is a report to the Commission for our information in 1942 it shows that the ratio of expense to revenue in percentage was 60 per cent,—therefore, there is a decrease of 6.8 per cent, or 6.8 cents per revenue dollar, less cost of operating expense there for you to operate your railroad in the Southern region, is that right?

The Witness: That is before taxes and equipment and joint facility rents. I might call your attention to the exhibit submitted for the AGS Railroad Company, in com-

paring Exhibit 5 with Exhibit 4, both with respect to the AGS.

Mr. Bruce: For the Southern Railway, the freight revenue per cent is increased there, that is, on the whole, it is 41.6 per cent, that is for the Southern Railway, that is 1942 over '41 for the first nine months; the passenger increase was 109.3 per cent. Therefore, there was a much greater increase there in passenger earnings than in freight earnings in per cent, than in freight earnings.

The Witness: Yes.

Mr. Bruce: And if your ratio has been reduced that much in expenses against revenue, the reduction must have been [fol. 2000] greater in passenger than in freight, wasn't that right?

The Witness: Yes sir, and I believe that is brought out there.

Mr. Bruce: That is, I mean in the operating cost.

The Witness: Yes sir, I believe that would be borne out by reference to Page 1 of the exhibit consisting of ten pages wherein it is shown that for the year 1941 with respect to these Class I carriers in Alabama, the net railway operating deficit is substantially less than it had been in prior years but they are still operating at a deficit.

Mr. Bruce: The entire system of each one of these railroads?

The Witness: Yes.

Mr. Bruce: And that includes your operation in regard to parlor cars and observation cars and your buffet cars and the diners and so forth and so on?

The Witness: Yes.

Mr. Bruce: That is all included in that so-called deficit?

The Witness: Yes.

Mr. Bruce: And these cars bring in very little revenue, such as parlor cars, club cars, buffet cars, observation cars and so forth?

The Witness: Yes sir, and dining cars. As to that operating ratio, there is an illustration to show the increase in equipment rents or net operating rents; my Exhibit No. 5, [fol. 2001] shows for the Alabama Great Southern Railroad net rents payable for the eight months ended August 31, 1942, of approximately $459,000 as compared with $9,565 for the corresponding period in 1941. When this is added to the operating expenses, of course, it would be an enormous influence on the operating ratio.

Mr. Bruce: Is the expenses incurred in the operation of your various passenger agencies in the cities throughout the nation included in that operating expense against passenger?

The Witness: Yes sir.

Mr. Bruce: Well, that is all I have, thank you.

President White: Any cross examination of this witness?

Mr. Bliss: Oh, yes sir.

President White: All right, let's go.

Cross-examination.

By Mr. Bliss:

Q. You were asked if you could furnish the operating ratios for passenger and freight for the corresponding eight months of the year 1941, and you replied that it would be rather difficult to get those figures. Couldn't you submit the operating ratios for passenger and freight for the entire year 1941?

A. We could do that; they are available in the annual reports to the Interstate Commerce Commission; they do show the operating ratios.

[fol. 2002] Q. Perhaps that would answer the question if you could furnish those.

A. We could furnish those all right; as a matter of fact, they are all available in the detailed general statement of the operating expenses.

Q. Those past operating ratios have always been over 100, haven't they?

A. Yes sir.

President White: Do you mean in the total or the passenger?

Mr. Bliss: On the passenger?

President White: Yes.

The Witness: Yes sir.

Q. Now, you have operating ratios of 64 per cent for some carriers and 70 per cent for others? How long has it been since there were operating ratios that low on passenger traffic?

A. I believe this is the first year but, as I say, the passenger traffic is still not earning any participation and return on the investment.

President White: Has it ever done so in its history?

The Witness: No sir, not that I know of.

Q. Now, Mr. Beight, let's look at your Exhibit No. 5.

A. Yes sir.

Q. Now, Line 8, does that include estimates for excess profits taxes?

[fol. 2003] A. That includes an estimate for all taxes up until August 31; that is Line 8 plus Line 3 represent total accrual for all taxes to August 31.

Q. Yes, but Line 8 includes income and excess profits taxes, doesn't it?

A. That is right.

Q. How have you apportioned those taxes to the freight and passenger services?

A. In accordance with the formula prescribed by the Interstate Commerce Commission.

Q. Just how does that work?

A. That works on the basis of the net railway operating income relationship shown on Line 6.

Mr. Oliver: In other words, you have charged 83 per cent of the income taxes to freight and 17 per cent to passenger?

The Witness: That is right.

Q. Your freight business, however, is more profitable than your passenger business, isn't it?

A. That is correct.

Q. Do you contend that you were incurring any excess profits taxes because of your passenger business? Would you?

A. I wouldn't be in position to state that.

Q. You have stated that you were incurring a deficit on the passenger business?

A. Yes sir, we have done this under the formula pre-
[fol. 2004] scribed by the Commission; it has operated at a deficit.

Q. Yet, you have charged the passenger traffic with 17 per cent of the excess profits taxes?

A. Yes sir, and we have done the same thing in prior years, or we would have done the same thing in prior years if the same situation had existed. This is the first year we have shown a net operating—net railway operating income up to this point.

Q. You did not charge them any taxes then?

A. That is right.

Q. And you now charge them the same taxes as the freight in proportion to their relationships to the net railway operating income?

A. In that proportion.

Q. And some of those taxes are excess profits taxes?

A. I assume that they are.

Q. If you changed your allocation of taxes by as much as $200,000, what would happen to Line 25?

A. If we changed that, we would get away from the formula prescribed by the Commission, and we would have just as much right to change the operating expense setup, and we don't have any right to do that.

Q. What would be the effect if you took $200,000 of taxes from the passenger and charged it over into the freight, what would that do to Line 25?

[fol. 2005] A. I haven't worked it out yet.

Q. Well, that is just very simple.

A. But we are compelled to follow the Commission's formula for distributing taxes and, therefore, in doing that, it naturally works out to a deficit.

Q. But if you were to change your allocation of taxes by as much as $200,000, you would wipe out your deficit, wouldn't you?

A. And we would not follow the formula prescribed by the Commission.

President White: I think that you are dealing in argument now.

The Witness: We would have to change the figures, as a matter of fact.

Q. Going back to your Exhibit No. 3, Sheet 1, does that include the deficits in all passenger service?

A. That is right.

Q. Including express, mail, milk and cream?

A. Yes sir, or everything else that might be assigned to passengers.

Q. And on Page 2, however, you have only the passenger revenue?

A. That is right.

Q. Without the allied services?

A. Yes sir, that is right.

[fol. 2006] Q. Now, then, if you added the figures on Page

1 and on Page 2 together, would you arrive at a figure having any meaning?

A. No sir, you would have to add them to the total passenger revenue; you would have to add them to the total passenger and allied revenues.

Q. Now, on Page 3, what do you show under the total headed 1941 for the Gulf, Mobile & Ohio?

A. We show 190 per cent.

Q. That is the largest figure in that column, isn't it?

A. That is right.

Q. Did you hear Mr. Barry's testimony to the effect that the Gulf, Mobile & Ohio was now enjoying the higher fares and have been using the 2.2 fare all along?

A. I believe I did.

Q. Will you look at Page 6?

A. I know that the Gulf, Mobile & Ohio has recently reorganized too; that might have some effect on it.

Q. Look at Page 6 of that exhibit, on your Exhibit No. 8, the column headed "Investment", "Investment in railway property used in transportation service",—has there been any depreciation?

A. There has not.

Q. You haven't then deducted from your book value there sums equivalent to the depreciation that you have [fol. 2007] charged to operating expenses?

A. No.

Q. Does the column headed "Taxes" include income taxes?

A. It includes all taxes.

Q. Please look at Exhibit No. 4, at Sheet 1,—will you look at the lines denoted revenue per coach mile for the Southern Railway?

A. I see that.

Q. About what per cent has that increased in 1942 over 1941?

A. I would say about 45 per cent.

Mr. Oliver: That is purely a mathematical calculation.

The Witness: Well, about 45 per cent.

Q. Have all of those figures generally shown increases?

A. I believe they have.

Q. Do you have any figures that indicate your cost per passenger train mile or passenger car mile?

A. No, inasmuch as all of that would be reflected in the net operating results from passenger service, we have not made any effort to reduce it to any unit cost.

Q. The net result from passenger service as to 1942 over 1941?

A. They are not losing quite as much as they had been during the period from 1921 to 1941, but they are still losing money.

Q. Are you losing money or are you just failing to make the return on bonds and taxes?

[fol. 2008] A. We are failing to the extent that the passenger service is still unable to give any assistance to the freight,—in other words, the freight is still carrying it all.

Q. With no assistance from the passenger?

A. The freight is carrying it all.

Q. Will you look at Exhibit No. 5, the sheet for the Seaboard Air Line Railway?

A. As I said there, the Seaboard Air Line Railway has not made any provision for its taxes, its federal and state income taxes or its federal capital stock tax.

Q. But isn't the Seaboard Air Line Railway doing just about as well on its passenger traffic as it is on its freight?

A. I haven't gone into those points.

Q. You gave us the operating ratios?

A. Yes sir, but I didn't think much of it.

Q. Is the Seaboard Air Line Railway going to have to pay much income tax?

A. I don't know, sir.

Q. You know that they have been in receivership and had losses over the past years?

A. I never made any particular study as to the Seaboard Air Line Railway.

Q. Are you sure that they will have to pay any income taxes this year?

A. I wouldn't be able to answer that question for you.

[fol. 2009] Q. Have you computed the return, say the return—or after federal taxes based on the valuation that you have used for any of those roads, on Exhibit 5?

A. No.

Q. Could you figure out what per cent the forty-four million in Line 6 on the first page, what per cent that is of the valuation figure that you have used on Line 16?

A. Of course, that would not really mean a whole lot.

You wouldn't have the greater portion of the taxes included in that figure shown on Line 6.

President White: We will take a five minute recess.

(Short recess taken.)

President White: All right. Proceed.

Q. Looking again at Exhibit No. 5, can you explain why you picked 5¾ per cent?

President White: What is the question?

Q. Can you explain why you selected 5¾ for Line 17?

A. We considered that a fair return on the investment.

Q. You didn't get it from the Interstate Commerce Commission's decision in Reduced Fares in 1922?

A. I do recall some mention being made of the Interstate Commerce Commission having stated that at sometime or other it was a fair return, but we consider it also to be a fair return on the investment.

President White: I would like to ask you one question [fol. 2010] before we get through here. Referring to your Exhibit No. 3, Page No. 6, where you use the investment in railway property used in transportation service for the Southern region, that, of course, includes Alabama, doesn't it?

The Witness: Yes sir.

President White: Now, take the figures showing the investment for 1941 of $3,273,594,731,—can you give us the comparable figure that has been used by the Interstate Commerce Commission as some measure of fair value in its decisions in freight rate cases?

The Witness: No sir, I cannot.

President White: If you take the total investment in railway property for the United States as a whole, derived in the same way I understand you derived your figure, it is approximately $24,500,000,000, isn't it,—or do you know?

The Witness: No sir, I do not. I do believe, but I am not really sure about that but that the Interstate Commerce Commission in arriving at its rate of return, does not include cash and materials and supplies, whereas cash and materials and supplies have been used in Sheet 6 of my Exhibit No. 3.

President White: But it is not your position, as I understand you, that the investment figures used here by you in your Exhibit No. 3 are figures used by the Interstate Commerce Commission when they undertake to determine whether the railroads in the Southern region are obtaining [fol. 2011] a fair return or as to what return they are obtaining?

The Witness: No sir.

President White: All right. My recollection is that those figures were brought out in the record in Ex Parte 148.

Mr. Bruce: Approximately $17,000,000,000 vs. $24,000,000,000 plus, difference.

President White: That is for the railroads in the country as a whole.

Mr. Bliss: The carriers have asked that you consider the record in Ex Parte 148——

President White: It will be available.

Mr. Bruce: The figures were in there, but that was strictly a revenue case.

President White: That wouldn't affect it.

Mr. Bruce: That was just a revenue case where you needed more money and these figures were not important in that case.

President White: All right, proceed.

By Mr. Bliss:

Q. Will you look at Exhibit 5, the sheet for the Alabama Great Southern,—you show on Line 8, $3,700,000, roughly, of federal and state income and federal capital stock tax against, in Line 6, net railway operating income of $4,800,000, roughly. What per cent have you used to get taxes as high as that? Can you explain that? Is there some unusual feature to make the taxes that high?

[fol. 2012] A. In this connection, I will say that we contacted the tax department in Washington and asked them to give us as nearly an accurate figure on the accruals to August 31st as they could and to separate those accruals between the taxes other than income and federal capital stock tax and federal and state income.

Q. Doesn't the Alabama Great Southern Railroad Company have any bonds on which it pays fixed charges?

A. I assume it does.

Q. Well, that amount is deductible as an expense for income tax purposes, isn't it?

A. I imagine all of those features have been given consideration in arriving at these taxes, although I didn't make this estimate; it was made by our tax department.

President White: You couldn't say whether that was net after deducting fixed charges on funded debt, could you?

The Witness: The fixed charges will come out of the net railway operating income as shown on Line 10; it would have to come out of that in order to keep the account straight.

President White: That is true, but you are not able to say whether in setting out the figure for the federal and state income tax and the federal capital stock tax that is the gross figure or a figure derived after deducting your interest on your bonded debt?

The Witness: No sir, I am not qualified to say that, sir.

[fol. 2013] Q. Do you know the details of the computation of any of these tax figures?

A. I do not.

Q. You can't say of your own knowledge how accurate they are?

A. The party that gave them to me has been dealing with such tax matters for the last fifteen or twenty years, and I am sure that they are accurate.

President White: Anything else on cross examination?

Commissioner Harrison: I want to ask him something on this same exhibit.

President White: Exhibit No. 5?

Commissioner Harrison: No. 5. I notice that you have Southern Railway, it would be the same thing, you have investment, $611,000,000, and then below that you have $16,000,000 cash, and you have figured your return that you are entitled to not on the $611,000,000 but on the investment plus the cash that you have there.

The Witness: Plus the cash and the materials and the supplies.

Commissioner Harrison: Is that cash and investment or is that cash from the revenue——

The Witness: That is the cash balance at the end of the year.

Commissioner Harrison: That is not a part of the invest-
[fol. 2014] ments, is it?

The Witness: The management always figures——

Commissioner Harrison: I am asking you if the cash that you have there is an investment.

The Witness: We always figure our return on the basis of including cash in materials and supplies.

Commissioner Harrison: And you added your cash to your investments?

The Witness: Yes sir.

Commissioner Harrison: And you have taken your ratio of revenues, cash and investments, and arrived at 19 per cent?

The Witness: Yes sir.

Commissioner Harrison: And the way that you arrive at your return on your investment, you take the 19 from your 100 and take 81 per cent of your gross revenue?

The Witness: Yes sir.

Commissioner Harrison: And you figure that should be your return on your investment plus cash?

The Witness: Yes sir.

Commissioner Harrison: And it would be different if you left out the cash item and figured it on your investments alone, wouldn't it?

The Witness: Yes sir.

Mr. Bruce: You are permitted, at the present time, to do that and it becomes a part of your operating expense, your
[fol. 2015] property tax and rents and so forth?

The Witness: Yes.

Mr. Bruce: But you are not permitted to charge against your operating cost excise and income taxes, is that right?

The Witness: I believe that is right, but the Southern Railway does accrue for that.

Mr. Bruce: In your exhibit you have included an amount that you have set aside to retire your total taxes as they become due?

The Witness: Yes.

Mr. Bruce: That is all.

By Mr. Bliss:

Q. Speaking of the cash, on Line 14, can you explain why the L&N Railroad needs 34,000,000—nearly 35,000,000 and the Southern only 16,000,000?

A. No, I can't explain that.

Q. The Southern Railway does more business than the Louisville & Nashville Railroad Company, doesn't it?

A. I couldn't make any explanation as to why that occurred.

President White: All right.

Mr. Bliss: I think that is all.

President White: Any redirect examination?

Mr. Oliver: No sir.

President White: Any further questions from the bench?

(No response.)

[fol. 2016] President White: You are excused.

(Witness excused.)

Mr. Oliver: That completes our case.

President White: All right. Call the next witness.

Mr. Bliss: I will call Mr. Earley, who has not been sworn yet.

JAMES S. EARLEY, being first duly sworn, testified as follows:

Direct examination.

By Mr. Bliss:

Q. What is your name?

A. James S. Earley.

Q. Please state your address and occupation, Mr. Earley?

A. My residence is Waterford, Virginia; I am an economist employed with the Office of the Price Administrator.

Q. What is your background in economics?

A. I have been a student of economics since 1928 and have been teaching economics and engaging in research since 1932. I have been with the Office of Price Administration or its predecessor since August, 1940.

Q. What are your duties at OPA?

A. I am Assistant Chief of the Price and Economic Branch of the Research Division which was formerly on memoranda concerning the general problems of price sta-

bilization and the prevention of inflation for Administrator [fol. 2017] Henderson, and recently for Justice Byrnes, Director of Economics Stabilization.

Q. Is it a part of your duties then to watch the whole price control program and the whole economy?

A. That is right.

Q. Do you have some exhibits that indicate the problems and the results so far achieved?

A. I have. I have only a few copies. I have five copies.

President White: We will get along with three up here.

Mr. Bliss: I ask that this be marked for identification as an exhibit.

President White: That will be marked as Exhibit No. 7.

(Exhibit No. 7, Witness Earley, marked for identification.)

Mr. Bliss: Could we mark the charts 7-A and 7-B and so on?

Commissioner Lee: They are all bradded together.

President White: The documents now offered are all bradded together and the entire document, all of them may be referred to as Exhibit No. 7, and we will number them in the order in which they are bound together as Sheet 1, Sheet 2 and so on. Proceed.

The Witness: These exhibits are designed to illustrate the problems which we have faced in trying to stabilize the cost of living and prevent inflation. And to illustrate the importance of overall stabilization, the demand for which [fol. 2018] led to the recent Act of October 2, under which we are authorized by Justice Byrnes to intervene in any cases involving public utility rates and railway transportation rates.

This first chart, Page 1, indicates the growth of the war economy and the inflationary pressure which will arise out of almost all our production resources are devoted to war goods which are not available for civilian spending. At the same time, of course, people begin buying these goods, trying to spend on this shrinking volume of goods, placing great pressure upon price ceilings. This tendency you will note with reference to war goods and non-war goods will continue and become more acute in the future; the inflationary pressures are great now but will be corrected in

the future. It shows very diagrammatically the position that we are in.

The next two sheets, Nos. 2 and 3, are meant to illustrate the somewhat better control that we have thus far obtained in this war than the last war by indicating the price of these various types of commodities, showing the great difference in the situation in World War No. 1 than in this war, beginning in January, 1929. Those were all wholesale prices and in all cases, the increase in price has been held down relative to the last war. We hope to continue that and even improve upon it by a stabilization from here on out or a virtual—not of all items, but as a general rule.

The importance of the anti-inflation program is only par-
[fol. 2019] tially indicated by Sheet 3, but this brings out the importance of the savings to the Government. The significant thing is from the fact that prices have not arisen as greatly in this war as in the last. During the first 32 months of this war, the cost of war munitions and construction is $25,000,000,000. If we had to buy those munitions and other war goods at prices comparable to those of the first World War, in comparison to the beginning of the war, we would have had to have paid $6,000,000,000 more, and we note that as the savings as the result of the price control program.

You will notice in the righthand column which projects as the war expenditures estimated for May, 1942, to the end of next year, December, '43, the cost of war munitions and construction are estimated at $130,000,000,000 and if prices rose to the same extent during the next few months, from May on, as they did in the last year, the cost to the Government would be increased by $62,000,000,000. It is figures of that sort which we are attempting to save to the Government and to the taxpayers by keeping the prices down. The figures are larger now because of the continued growth in the war program. It works out around $477 per capita,—and that is arrived at by simply dividing the $62,000,000,000 saving by the 130,000,000 people in the United States, and that only makes a comparison with the prices as they rose in the last war and not the prices that might
[fol. 2020] come about if we fail to control them in the present war. Inflation could go right on up as we have seen it in other countries.

Q. You have heard testimony as to the value of the rail-

roads in this country. How does that $62,000,000,000 saved compare to the value of the railroads' figure?

A. As I remember the figure set as the value of all of the American railways, it was about $24,000,000,000. This figure of savings over the 20 months, May, 1942, to December, 1943, would be about two and a half times as much as the total value of the American railroads.

There are, of course, a lot of other reasons for combating inflation—the main one is that it would defeat the war program by upsetting production, labor relations and civilian morale, and the post war problem is also importance if inflation gets going, because the deflation which will almost inevitably follow with it, and the difficulty for years to come. I think economists are all agreed on that issue,—the vital importance of preventing any further substantial rise in the cost of living.

Sheet 4 shows the rise in wholesale prices and the cost of living index from August, 1939, to August, 1942. On the basis of August, 1939, as 100, the wholesale prices have risen about 34 per cent by that latter date and the cost of living had risen about 18 or 19 per cent.

Q. You have indicated on that the date of the general [fol. 2021] maximum price regulation. Would you also explain in what portion of this period the Office of Price Administration, your predecessor agency, was working on a price program?

A. We started working under the old National Defense Advisory Commission, of which Mr. Henderson was the Commissioner, for price stabilization, in June, 1940, and up until January, 1942, we were exercising our control informally,—we had no legislation, but we had certain powers by cooperation with the armed service—they might even take over a plant in case there was a violation of our informal effort to control, but it wasn't until the middle of 1941 that we ever projected an Act, and that was passed in January, 1942.

As a result of Pearl Harbor and the very rapid growth of the war program thereafter, we saw that even the selective control we had exercise- informally first and then under the Price Control Act of 1942 was not sufficient to hold the control of the situation.

Q. What is selective control?

A. That is picking out the price that seemed to be getting out of line and placing a ceiling over that price or over

those prices, over such commodities as we believed were necessary to control it and keep it within the proper range in the economy. For instance, it started with materials and second-hand machinery tools and bituminous coal, and it went from that right on down the line, and we had to get [fol. 2022] out specific regulations covering millions of transactions in the economy, and the thing was running away and hence, in May, 1942, we imposed the general maximum price regulations which imposed ceiling prices usually, generally after March, 1942, level over all things which were not controlled particularly under the Act.

This did not include public utility or transportation rates.

Thereafter, as you can see from Sheet 5, some of the items in the cost of living which have now become the most important list for us to hold in line ceased going up,—for instance, rent, as rent controls were imposed, rents began to decline—this is a country-wide average; the prices of house furnishings tapered off and clothing prices went down somewhat, but food prices continued to mount. And, in general, we found our weaknesses under the Act and the general maximum price regulation lay in three fields,—one, farm prices, and the second, wages, and, thirdly, and to a somewhat lesser important branch, in public utilities and transportation.

Hence, the Act of October 2, 1942, which appointed the Director of Economic Stabilization and permitted the freezing of all prices, wages and costs entering into the cost of living and in the case of public utilities, as you know the Act directed that we should be notified of any increases and that we should intervene if we thought it necessary.

[fol. 2023] Mr. Bruce: Was that power decreed to the President, or was it decreed to the Office of Price Administration?

The Witness: No, there were certain changes in the Act which permitted us as the Office of Price Administrator to control items which we could not previously control or at certain levels where we didn't exercise control previously; such as in the case of farm production, where the highest price of 1942 could be imposed, as we couldn't do it before.

In the case of wages, the power was given to the President and by Executive order or directive it was delegated to Director Byrnes and, in turn, I believe it is being administered by the War Labor Board under his direction or at his direction.

In the case of public utility rates, it was directed that the notice of any suggested increase in any rate was to go to Director Byrnes and Director Byrnes gives us our directive as to what we shall do in such cases. It is under his instructions that we appear before this Commission.

Mr. Bruce: As I understand it, then your department was designated as the department to appear before the various commissions?

The Witness: Yes sir.

Mr. Bruce: On utility rates of various descriptions?

The Witness: Yes sir. The price simply shows the divergent movement and the elements in the cost of living index after May 15 when the general tax came in; it shows [fol. 2024] up the divergent movement which is on this other chart in a clearer fashion. Our fundamental viewpoint came from sad experience, you might say, in that it is necessary to go across the board in stabilization, wages, farm prices and other prices, and utilities prices, that is, you regulate one thing and another part of the structure starts getting out of hand, and other parts of the economy will go up and so forth,—labor rates, higher wages and so forth, and public utility rates will rise and labor and farmers will likewise want an increase and that is because of the ineffectual character of regulation in a case like this and we feel like we should intervene here although this one isolated case is not important in the country as a whole, because it involves intrastate rates and it is only one state, but we have found that you will have to sit in on every front if you are going to make the whole program successful. Particularly important now is the labor front.

On Sheet 7, you see the movement in wage rates, and the Office of Price Administrator has felt very definitely for many months that wages had to be stabilized, and as you know, the War Labor Board worked out a schedule by which labor would be governed as to the cost of living index, and we feel if we can hold the cost of living index at a certain point that we can hold the wage front at the proper level. The rising of wages was highest in the important war in- [fol. 2025] dustries and its effect on retail trades and services.

We feel, as I say, that a case such as this, and cases similar to it are—that it is necessary for us to fight and to appear and place our case before the Commission for their consideration particularly because of the necessity of hold-

ing the cost of living so wage rates will not rise, under the Little Steel formula.

Sheet 8 shows the rise in salaries and wages, the annual rate of payments by months,—that shows the continued uninterrupted rise up to the time just shortly before the new Act was passed and an upward rise which we are trying to curb by curbing the cost of living and thereby permitting the War Labor Board and the Office of the Director of Economic Stabilization to impose effective wage controls.

On the final sheet is a comparison between rising income payments of which the largest single segment is salaries and wages and the associated change in the cost of living from August, '39, to March, '41, and from March, '41, to February, '42, those are the two periods shown. There is about a 17 per cent rise in the income payments in the early period associated with the small trades in the cost of living about 5 per cent, but the largest increase from March, '41, to February, '42, as the war program got under way, was associated with a very substantial increase in the case of living, the total index rising——

[fol. 2026] President White: What do you mean by income payments?

The Witness: Those are all payments to wage earners and salaried workers, farmers, business men, people who get interest, rent, dividends, they are all, it is statistics covering the whole country.

President White: As an economist, what would be your opinion as to the effect during the period March, '41, to February, '42, on the cost of living of the increase in income payments between the dates August, '39, and March, '41?

The Witness: It would be a considerable hangover there; the earlier gross in income would in part be effective during the latter period.

President White: The great increase in wages brought the increase in the cost of living?

The Witness: I wouldn't say only wages.

President White: That was a big part of it?

The Witness: Yes sir, wages or forms of income, all throughout the economy, there was a big rise in that period.

By Mr. Bliss:

Q. Your last two sheets deal with gross payments and includes increased employment?

A. Yes sir.

Q. Whereas you have one sheet in there which refers to hourly rates?

A. Yes, Sheet 7 refers to average hourly earnings, the [fol. 2027] increased income payments are due a lot more people employed, working longer hours, and in most cases at somewhat higher rates per hour.

Q. But, of course, the gross payments have gone up much more rapidly than the rates per hour?

A. Yes sir.

Q. Are railroad passenger fares included in the cost of living index?

A. Yes sir, they are.

Q. That is the same index which was used in connection with the Little Steel formula and in connection with measuring the accomplishments of the stabilization program?

A. Yes sir. Railroad passenger rates, it is true, are a small part.

Q. Will you state what portion they are?

A. Well, transportation, personal transportation, as a rule, inter-city transportation, that is the transportation of persons is about eight-tenths of one per cent of the total cost of living, that is under the conditions as they exist today, and includes all forms of automotive transportation, buses, streetcars and commutation, as well as inter-city railroad passenger fares. The importance of the inter-city railroad passenger fares is indicated by the index as being one-tenth of one per cent.

Q. That is based on what figure?

[fol. 2028] A. Those were based on budgets, a nation-wide survey 1935 to 1939.

Mr. Oliver: One-tenth of one per cent for what?

The Witness: For inter-city passenger fares, railway passenger fares, but that does not include buses.

Q. Then, that figure might perhaps be somewhat larger if the index were to be recomputed now?

A. If it were to be recomputed, without question, it would be larger on account of the increased amount of travel and the shortage of automotive means of travel, particularly in connection with gasoline rationing.

Q. Now, one-tenth of one per cent seems like a very small amount, but are there any other items that you could mention that have around about that same weight in your index?

A. Yes sir; these are taken from the composition of the index, as is the other figure for passenger fares,—it is about of the same importance as blankets, work shoes, corn meal, salt pork and cotton overalls; cotton overalls, for example, have a weight of eleven-one hundredths of one per cent and corn meal one-tenth of one per cent; salt pork, one-tenth of one per cent; work shoes, eleven-one hundredths of one per cent and blankets eight-one hundredth- of one per cent. So, we find that it is only a small part of the cost of living, but that is no reason for not imposing control over it. If we do not control it, as well as other items, everything [fol. 2029] would go out of line, and while it is a very small item, there are other very small items also that should be controlled—in fact, you will find very few items which are really, if taken severally, a large proportion of the index which we have prepared.

Q. You mentioned the case of corn meal, and take that for example,—if the price of corn meal were allowed to rise about 33⅓ per cent, there would still be other products that could be substituted for it?

A. Yes sir.

President White: You are speaking as of today?

The Witness: Yes sir.

President White: And not as of next week?

The Witness: Yes, that is right.

Q. Are there many other services that could be substituted for rail transportation?

A. Well, of course, bus travel and automotive travel are the main substitutes.

Q. Has the Price Administrator taken any action with respect to automobiles and rubber tires and gasoline?

A. Oh, they are all rationed,—at least, in the eastern states, and both tires and gasoline will be rationed throughout the country beginning December 1st, unless present plans are changed. Rubber tires are rationed throughout the country already as a matter of fact.

[fol. 2030] Q. Would you say that it will be possible to allow for much inter-city travel by private automobile?

A. Very little according to the experience on the East Coast and according to the rubber shortage throughout the country, there will be relatively little gasoline available for that use.

Q. Will it be possible to allocate to the bus lines all of the tires and gasoline and new buses that they want?

A. No, I am sure that it won't, but I presume they will get a better allocation than individual passenger car owners because of the essential character of their service.

Q. By that, you mean that they are common carriers to the public?

A. The principle is that the gasoline should be available only in substantial quantities to essential driving. That will apply for the purpose of saving rubber throughout the country.

Q. Are you familiar with any of the fine experiences on passenger fares?

A. Yes sir, I am. In three countries, Canada, Great Britain and Germany, railway passenger fares have been frozen. In Canada, railway passenger fares were frozen as of the seasonal level of 1941 when their general price ceiling came into effect in December, 1941.

President White: Did they also freeze wage levels?

[fol. 2031] The Witness: Yes sir, with a cost of living bonus. In Great Britain, likewise, after passenger fares had gone up quite substantially, I think 15 to 20 per cent in general during the first year and a half of the war, then the Government stepped in and froze them. They have not risen since.

In Germany, where the railways are state-operated, so far as we have been able to determine, they have not been increased since the war began.

Q. Is it a part of your research in your position to check the foreign experience as far as possible, is that correct?

A. Yes sir.

President White: In Germany, the railroads are owned by the government, or by the state, I believe they call it. To what extent is that true in England and Canada, Great Britain?

The Witness: I think it is not at all true; I think the British Government owns no railroads in the British Islands. If so, certainly it is an infinitesimal part of the whole system.

President White: Hasn't the British Government provided any subsidy for the railroads for operating losses?

The Witness: They have done this: Since the fall of 1941,

they have taken out of the railroads' hands the fixing of rates and they are paying the railroads flat rentals, based on pre-war earnings, more or less. And the government [fol. 2032] then fixes the rates and there may be some losses involved in those two, in the comparison between the rentals and what they take in. We suspect there is, but the accounting that we can get hold of does not prove it. It is true that they did stop at a certain rate, and the freight and passenger rates won't go up any further, and they will take the loss.

President White: On the basis that you are familiar with it, is it your judgment as an economist, that the British plan is designed to maintain the solvency of their railroads?

The Witness: Definitely.

President White: On a base not less than it was when the war began?

The Witness: Yes sir, that is quite true.

President White: In other words, to maintain the status quo?

The Witness: Yes sir. It was put in after a year and a half of the war and in that intervening period, there had been considerable price involvement and I am not sure it went back to the pre-war level, but it doesn't maintain that level.

Mr. Bruce: Has the government taken over the railroads in Canada?

The Witness: No, except to the extent that they own the Canadian National.

Mr. Bruce: They own part of the systems, but the independent lines have been left independent?

[fol. 2033] The Witness: Yes.

Mr. Bruce: Have the rates been frozen there?

The Witness: Yes, they froze them initially at the December—I believe it was on December 1, 1941, that level, and then later they made some adjustment because of seasonal differences in rates, and excursion trains and so forth. The present system is that the rates can be no higher than in 1942 or '43 in any subsequent year for the duration than they were in the corresponding months of 1941; and the War-time Prices and Control Board, which is the counterpart of the Price Administrator, up there, has authority to veto any increase—they were given that direct authority.

Q. Speaking of the American railroads, has the Research Division made any study of the prices of materials and supplies bought by rail carriers?

A. Yes sir, they have. I have one right here.

Q. Can you advise what that study shows as to the level of the prices or the movement of the prices?

A. It is not inclusive, of course, but it does pick out a number of important products which the railroads purchase, and it computes the per cent increase in price from the beginning of the war—that is from August, 1939, and shows a competitive rise in price on those same goods in the number of months beginning with this war—rather, I mean the first World War, the last war.

[fol. 2034] Q. Beginning with August, 1914, do you mean?

A. Yes sir.

Q. What is that for some of the commodities?

A. Bars, angle, track equipment, in World War No. 1, during the same period, and up to date in this war, they rose by 117 per cent in the other war and in this war they have not risen at all.

Q. All right.

A. Bolts, track, for steam railroads in World War No 1, they roes 163 per cent during this period, and in World War No. 2, they rose 14 per cent.

Bituminous coal, in World War No. 1, it rose 180 per cent, that is the per cent increase, but not shown by the index, because by the index it would be 280; and in World War No. 2, for bituminous coal, 15 per cent.

Petroleum, World War No. 1, it rose 75 per cent, whereas in World War No. 2, for the same period, 17 per cent.

Tie plates, World War No. 1, 94 per cent; World War No. 2, none.

Rails, World War No. 1, 33 per cent; World War No. 2, none.

Those are the only items that we have computations for, and there were some computations made here as to the savings effected by the OPA price actually on four items bought by railroads. These savings were computed by taking the difference between the rise in price in this war and [fol. 2035] the last war, and applying that to the estimated 1942 requirements,—in other words, if the estimated 1942 requirements had been purchased at the higher prices of World War No. 1, the railroads would have paid these amounts in addition to what they have had to pay on the es-

timates of the 1942 requirements,—petroleum, $45,000,000——

President White: That is the railroads of the entire country?

The Witness: Yes sir. Bituminous coal, $395,000,000; steel rails, $28,000,000, tie plates, $142,000,000—total on those four items is $610,000,000.

I have here a list of products purchased by railroads, all of which are under price control. I don't know whether it is of interest or not, I don't know whether it is of interest to you, I don't know whether it is of sufficient importance to you or interest to you to put it into the record before the Commission.

By Mr. Bliss:

Q. Generally speaking, all things which are purchased by the railroads are affected by the price stabilization program?

A. Yes sir, including wages under the Act of October 2, 1942; there was a stabilization agreement, too, before that time.

Mr. Bruce: Do the railroad employees come under your [fol. 2036] jurisdiction or is that left under the jurisdiction of the War Labor Board?

The Witness: It is under the jurisdiction as I understand it, technically, under the jurisdiction of Mr. Justice Byrnes now, who has delegated that authority, so far as wages are concerned, to the War Labor Board, and they work under his directives; he can lay out the broad policies to be followed.

Mr. Bruce: Is that the only group of employees that might come under that classification as being under the War Labor Board?

The Witness: No, it extends to all employees, I think, potentially; I think they have made exception on firms employing less than eight persons, and recently there was a temporary exception for farm labor, but potentially, it does cover the whole wage field and any group could be brought under it by the terms of the Act, as I would interpret it. Salaries over $25,000 are put under the Treasury control by the Director.

President White: Anything further on direct?

Mr. Bliss: Yes.

Q. Does OPA consider there are some commercial traveling that is essential?

A. We do, and the reason commercial travelers didn't get more under the gasoline rationing was that it was felt [fol. 2037] that alternative means of transportation were available, railroads and buses in most cases. But for purpose of fixing prices, setting price ceilings, we would consider expenses on account of commercial traveling as a perfectly ordinary item to be considered in fixing the prices.

Mr. Bliss: May I have this sheet of paper marked as an exhibit?

President White: This will be marked Exhibit 8.

(Exhibit No. 8, Witness Earley, marked for identification.)

Q. Will you explain this statement that has been identified as Exhibit No. 8?

A. This was not made under my direction, but was made in the Transportation Division of the Office, but I have had explained to me how it was derived, and as you will note, the source are the Interstate Commerce Commission, Bureau of Transport Economics and Statistics, which, as I understand it, is open to the public. It shows the monthly trend in 1940, '41 and so far in 1942 through July of the revenue passenger miles per passenger carrying car mile in the Southern region, Class I steam railways, indicating roughly the number of passengers carried per car, per passenger car. The important facts seem to be the substantial percentage increase in each month of 1942 over the corresponding months in 1941, reaching a point over 50 per cent,—the lowest being 34 per cent; and, secondly, a very [fol. 2038] substantial and continuous growth during the first eight months of 1942 itself when from January to July the figure measuring passengers per car goes from 17.6 to 27.0,—all of which figures, by the way, were bigger than the corresponding months of 1941, showing that not only was 1941—not only has 1942 been much better from the standpoint of the use of equipment for revenue earning purposes, but that this is still continuing, that this trend is continuing and that it should be even greater at a later date unless there is some sudden reversal of the factors which seem to be operating.

President White: Is there anything further on direct?

Mr. Bliss: Yes. I have a few more questions.

Q. Does the Office of the Price Administrator ever have to make upward adjustments in prices?

A. Yes, we do. We do it broadly on two bases,—one where it is necessary to do so for the continuance of essential production or the essential services. Above all, we would not wish to prevent essential activities on which the winning of the war depends; if anything were essential and a price increase were proven to be needed to carry on that service, we would raise the price, and, secondly, where the product, where the cost had risen so that profits generally in the industry—that the price of production had so risen to reduce profits below the preferred war level of '36 to '39, then our general policy there is to look at the overall profit [fol. 2039] position of the producers or the persons performing the service, and if their overall position shows that they need more profit to carry on this service, we will then raise the price.

Q. Is that done before or after income taxes?

A. Before; Congress, in levying income and excess profits taxes, it intended those persons would pay the taxes and if we raised the prices after the payment of taxes the consumer would pay the taxes, so all of our computations are before taxes.

Q. If the cost should rise but still the profits should remain up to those levels of 1936 to 1939, you would not make adjustments upwards?

A. We would not unless it could be proven that an essential service could not be carried on without larger profits,—that it could not be carried on for the prosecution of the war without larger profits than those pre-war profits.

Mr. Bliss: That is all.

Cross-examination.

By Mr. Oliver:

Q. Mr. Earley, you are not undertaking to say here, are you, that the rates that the railroads are proposing, the rates under suspension, are unreasonable, are you?

A. I wouldn't say that myself, because I am not a railroad expert.

[fol. 2040] Q. Does the OPA recognize the jurisdiction of the Interstate Commerce Commission to fix interstate fares and charges?

A. Yes sir, and the theory of the new Act is that the Interstate Commerce Commission and the other state commissions shall act as the body putting through the policies of the October 2nd Act and we simply call things to their attention. We appear before them.

Q. It is a fact, isn't it, that before the recent increase in interstate fares went into effect, the OPA entered a very full protest, giving its reasons for opposing the increase in the interstate passenger fares?

A. They entered a protest that I have seen; I don't know whether it was a full protest or not; I understand some recent data was not available.

Q. Well, the fact is that they did enter a protest and gave reasons for so doing?

A. Yes sir.

Q. And notwithstanding that, the Interstate Commerce Commission did authorize the increase in the interstate fares?

A. Yes sir.

Q. As I understand it, it is your position that the proposed increase in fares in Alabama covering intrastate transportation would be inflationary?

A. Yes sir.

Q. You stated, I believe, that the inter-city passenger [fol. 2041] fares constituted one-tenth of one per cent of your cost of living index?

A. That is right.

Q. Have you undertaken to make any estimate of what per cent the increase in Alabama would bear to your price index?

A. No.

Q. Would it be as much as one one-hundredth of one per cent, bearing in mind that the interstate fares all over the United States are on the basis that we are seeking to put into effect here and that that is largely true on intrastate fares except in the South?

A. I haven't made any computations; I know that the index is made up of fares applicable in three cities of Alabama, Mobile, Montgomery and Birmingham, so that it would affect the index that we have in Alabama, but how

important weighting is given to those three cities, I don't know.

Q. Or how important Alabama would be in relation to the rest of the United States as a whole?

A. Any importance to Alabama would be based upon those three cities as it affects them in these various cities.

Q. But it would be infinitely less than one-tenth of one per cent, would it not?

A. It wouldn't be infinitely less, but it would be substantially less.

Q. You mentioned incidenally, more or less something [fol. 2042] about this farm labor proposition. Hasn't the ceiling been lifted on the farm labor within the last week or ten days?

A. I believe that is true; I understand that at least there is a temporary listing for the harvest.

Q. Can you give this Commission any good reason why two passengers traveling in the same train, one traveling interstate and the other traveling intrastate in Alabama should pay different fares,—possibly traveling in the same car?

A. From the standpoint of the stabilization program, of course, a good reason would be that those rates now are different and pending any reduction in the other rates which maybe means the only way to eliminate the discrepancy, would be breaching the cost of living front. From the standpoint of transportation, I should think there might be some differences in the service, in interstate and the intrastate travel.

Q. I have restricted it to the same train and possibly in the same seat in the same car, as for that matter.

A. Then I would think only because of the origin of the traveler who might get on at some point and go part way over a train which had very inferior service and then get on an interstate train for the rest of the intrastate journey and happen to sit down with a person in interstate traffic.

Mr. Oliver: That is all.

President White: Let me ask you this question: As an economist, you have been making a study here of trans- [fol. 2043] portation along with other trains. What would be the effect if the coach fares and the other fares that are sought in this proceeding are increased on the railroad if we assume that the fares on the common carrier buses

in Alabama are not also increased—assuming the present fares on the buses are on the same level with the present coach fares of the railroad,—what would be the effect of doing that?

The Witness: There would be a strong tendency for people to try to ride the buses rather than the trains, but if the situation in Alabama is similar to that in Virginia, with which I am familiar, they just wouldn't be able to get on the buses and you would have to ration bus travel somehow. They certainly would try to ride the lower cost form of transportation.

President White: Any other questions?

Mr. Bruce: Is it the intention of your department, Mr. Bliss, to appear before the other Southern State regulatory bodies when similar proceedings before the State Commissions are held? I wonder if counsel can answer that question for me.

Mr. Bliss: We have already appeared in Florida, South Carolina and Virginia. We intend to appear in the other states where prior authority is required, in Georgia, North Carolina and Louisiana; the Tennessee Commission has suspended but has not set a date for hearing, and there is a hearing set in Jackson, Mississippi, a week from today, [fol. 2044] and we expect to attend them all.

President White: Anything further, gentlemen?

Mr. Bliss: I want to ask about briefs.

(Witness excussed).

President White: It seems that your presentation, so far as your Office is concerned, is rather brief and unless you want to comment, of course, on the evidence that the carriers have offered, I do not know whether you would desire to file briefs. As I understand the position of the department which you represent, it is that you are not undertaking to determine or pass on or help to determine the question of the reasonableness of the rates? What you desire to bring before the Commissions is the effect that the proposed increase will have on the question of the rise of prices as affecting the general economy and the war economy at this time, is that about correct?

Mr. Bliss: It is correct, but I think we go a little further than that. If we were convinced that the rail carriers needed the money in order to continue essential services, and we consider their services essential without argument,

we would not be opposed and we might desire to criticize their financial exhibits in some particulars.

President White: As I understand it, there has been no such position urged here that unless they are given this increase that they cannot carry on, that is during the war or [fol. 2045] during the emergency or during the period after the war, and there has been no such argument offered here, as I understand it, and no such evidence along that line, and you have heard their statements. They are offering it not entirely for revenue purposes, but not ignoring that element altogether, but for the purpose, of making the fares uniform, for one thing, and because they have not earned a fair return over the preceding years for some period, and such things as that as covered in their evidence.

Of course, we have no objection to your filing a brief. I think we ought to try to determine the case within a reasonable time; we ought to get the transcript of these proceedings in our hands before we undertake to decide the case, and that will probably take us ten days or two weeks. Would you need the transcript to prepare your brief in case you desire to file a brief? Do you expect to get a copy of the transcript, Mr. Bliss?

Mr. Bliss: I have not ordered one yet, but I probably will.

President White: How long would it take you to prepare and file a brief?

Mr. Bliss: It shouldn't take us very long, but it may be that it is not necessary if it would delay the Commission unduly, in that event, we might want to waive it and, of course, one point we want to bring to your attention is on the tax question. We have not argued with the witnesses [fol. 2046] about income taxes, but that can be handled by a brief reference to Ex Parte 148.

Mr. Bruce: May I interrupt for a moment? I don't know whether you are familiar with the law or not—the Alabama law states that the Commission does not have authority to suspend beyond 20 days without the approval of all respondents. Will you agree to the extension of that time?

Mr. Oliver: The tariffs were suspended to January 30th, as I recollect it.

President White: These rates couldn't become effective until January 30th under the suspension order unless we issued an order to the contrary.

Mr. Oliver: I would like to say this, gentlemen, without intending to interrupt you—that we are very anxious in Alabama as we are in every state to get these fares in just as soon as possible and so far as I am personally concerned and so far as the carriers are concerned, I am willing to waive the filing of briefs, of course, unless the OPA wants to file one.

President White: Certainly your financial showing doesn't show that the railroads are faced with immediate bankruptcy.

Mr. Oliver: We haven't tried to show that and don't argue that, but we feel in view of our showing on passenger revenue for the past six or eight years—I haven't gone [fol. 2047] back of that, that the small increase that we are here seeking is certainly not unreasonable, but we haven't pressed it entirely, as you stated, on the revenue needs and we are not exactly depending on it wholly for that purpose as we have so many times in the past been forced to do.

Mr. Bliss: This can be off the record.

President White: Off the record.

(Discussion of the record.)

President White: The Commission will take the proceedings with the evidence and give it consideration for order.

(Whereupon, at 6 o'clock p. m., Tuesday, November 24, 1942, the hearing in the above-entitled matter was closed.)

[fol. 2048] I. C. C. Docket 28963—Exhibit 19

Order

At a General Session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 1st day of August, A. D. 1942

Ex Parte No. 148

Increased Railway Rates, Fares, and Charges, 1942

No. 26550

Passenger Fares and Surcharges

It appearing, That in No. 26550, *Passenger Fares and Surcharges*, 214 I. C. C. 174, the Commission found, among other things that the regular passenger-fare structure of the railroads of the country, including those in southern

passenger association territory, with certain exceptions not here important, would for the future be unreasonable to the extent that it might exceed 2 cents per passenger-mile in coaches, without prejudice to the maintenance of lower fares in any one or more of the major districts of the country; that by order of January 21, 1942, in Ex Parte No. 148, *Increased Railway Rates, Fares, and Charges*, 1942, 248 I. C. C. 545, the Commission approved as reasonable an increase of 10 percent in the passenger fares then in effect; and that such increased fares became effective February 10, 1942;

It further appearing, That on July 14, 1942, the railroads operating in southern passenger association territory filed a petition in No. 26550, to which no reply or protest has been received, seeking a modification of our findings and outstanding orders therein to the extent necessary to enable such petitioners to publish and file tariffs increasing their basic coach fare from 1.65 cents (1.5 cents plus 10 percent) to 2.2 cents (2 cents plus 10 percent) per mile;

And it further appearing, That a basic coach fare of 2 cents per mile was approved by the Commission for application prior to Ex Parte No. 148 on railroads generally throughout the country, including the lines of said petitioners; that a general increase of 10 percent was authorized to be made in all passenger fares in Ex Parte No. 148, for the reasons set forth in the report therein, supra; and that a basic coach fare of 2.2 cents per mile is now maintained on Class I railroads generally throughout the country, with the exception of the aforesaid petitioners;

[fol. 2049] *It is ordered*, That the said petition in No. 26550 be, and it is hereby, denied.

It is further ordered, That the order of January 21, 1942, in Ex Parte No. 148 be, and it is hereby, further modified so as to authorize the aforesaid petitioners to apply the increase of 10 percent approved in said order to a basic coach fare of 2 cents per mile on the lines of said petitioners, subject to the rule for the disposition of fractions as modified by order of July 6, 1942, in said proceeding, and that in all other respects said order of January 21, 1942, shall remain in full force and effect.

By the Commission.

W. P. Bartel, Secretary. (Seal.)

[fol. 2050] I. C. C. Docket 28963—Exhibit 20

Before the Interstate Commerce Commission

Reply of Respondents to the Petition of Mr. Leon Henderson, Price Administrator of the United States, Seeking Suspension of Increases in Certain Passenger Fare Schedules Filed to Become Effective October 1, 1942

To the Interstate Commerce Commission, Washington, D. C.

Respondents, in reply to said petition, respectfully say:

I

Respondents filed tariffs with the Commission to become effective October 1, 1942, increasing their passenger fare in coaches from 1.65 cents per mile to 2.2 cents per mile under the authority of an order entered by this Commission on the first day of August 1942, which provided in part as follows:

"*And it further appearing*, That a basic coach fare of 2 cents per mile was approved by the Commission for application prior to Ex Parte No. 148 on railroads generally throughout the country, including lines of said petitioners; that a general increase of 10 percent was authorized to be made in all passenger fares in Ex Parte No. 148, for the reasons set forth in the report therein, *supra*; and that a basic coach fare of 2.2 cents per mile is now maintained on Class I railroads generally throughout the country, with the exception of the aforementioned petitioners:

* * * * * * * * *

"*It is further ordered*, That the order of January 21, 1942, in Ex Parte No. 148 be, and it is hereby, further modified so as to authorize the aforesaid petitioners to apply the increase of 10 percent approved in said order to a basic coach fare of 2 cents per mile on the [fol. 2051] lines of said petitioners, subject to the rule for the disposition of fractions as modified by order of July 6, 1942, in said proceeding, and that in all other respects said order of January 21, 1942, shall remain in full force and effect."

It is these tariffs, publishing fares already approved by the Commission, which protestant is seeking to have suspended.

The fares which these respondents are seeking to make effective have been approved by this Commission and apply today on railroads throughout the United States, including important railroads in the South, other than your respondents, such as the Illinois Central; Gulf, Mobile & Ohio; St. Louis-San Francisco; Columbus & Greenville, and others.

II

Under the heading "Protestant, His Functions and Duties," protestant states, among other things, that he has been "charged with the duty of rationing gasoline on the Atlantic seaboard of the United States which includes about one-half of the Southern Region." This territory, in which protestant has been charged with the duty of rationing gasoline, includes Eastern and New England States where the passenger travel is far greater than in Southern territory and where the passenger fares in coaches are exactly the same as those which respondents are now seeking to make effective over their lines, and which fares the Commission has already approved for application over respondents' lines.

III

Under the heading "The Proposed Adjustment," protestant states that prior to February 10, 1942, the basic passenger fares within the South were 1½ cents per mile in coaches and 3 cents per mile in Pullman cars. This is an incorrect statement. While the passenger fares in the South generally prior to February 10, 1942, were 1½ cents per mile in coaches, these fares were not the basic coach passenger fares, but were in the nature of special and reduced experimental fares which were established voluntarily by respondents for the specific purpose of attracting additional passenger travel.

In *Passenger Fares and Surcharges*, 214 I. C. C. 174, decided February 28, 1936, referred to by protestant, the Commission found that a coach fare of 2 cents per mile [fol. 2052] would be reasonable for application throughout the United States, including Southern territory. The Commission also specifically found that the lower "experimental

fares" then maintained by respondents for application in Southern territory were not unreasonable or otherwise unlawful. In other words, the Commission specifically found that a 2-cent per mile coach fare in the South was not unreasonable, but that if respondents desired to continue an experimental fare of less than 2 cents per mile, such a fare would not be unlawful.

IV

Under the heading "Commission Has Not Approved Proposed Rates in Order of August 1, 1942," protestant undertakes, in effect, to say that the order of the Commission was merely permissive and carried no approval of the proposed fares or finding of lawfulness or reasonableness.

In answer to this contention respondents respectfully refer the Commission to its order of August 1, 1942, as heretofore quoted. As previously stated, in *Passenger Fares and Surcharges, supra*, the Commission, after a most exhaustive investigation, approved as reasonable a coach fare of 2 cents per mile for application throughout the United States. In *Increased Railway Rates, Fares and Charges, 1942*, 248 I. C. C. 545, decided March 2, 1942, hereinafter referred to as *Ex Parte 148*, the Commission again reviewed the entire passenger fare structure throughout the United States and approved a 10 percent increase in all passenger fares. This resulted in a passenger coach fare of 2.2 cents per mile on all railroads throughout the United States, including certain railroads in Southern territory, excepting only the lines of respondents. It resulted in a fare of 1.65 cents per mile on respondents' lines solely because respondents still had in effect the experimental fare of 1½ cents per mile in coaches, and only asked for a 10 percent increase in the then existing fare.

In its order of August 1, 1942, the Commission amended its order of January 21, 1942, in *Ex Parte 148* and therein authorized respondents to apply the increase of 10 percent approved in said order to a basic coach fare of 2 cents per mile on the lines of respondents. In other words, the Commission, in that order, approved the coach fare which respondents are seeking to make effective in the tariffs filed to become effective October 1, 1942.

Protestant asserts that when respondents' petition of July 14, 1942, was filed with the Commission there were

[fol. 2053] no facts before the Commission concerning current revenues, expenses, operating conditions, and related facts, and further states that the petition was void of evidence of probative value, and merely relied on a decision by the Commission based on conditions in 1935. On the contrary, respondents relied upon that decision, *Passenger Fares and Surcharges, supra,* as well as upon the decision of this Commission in *Ex Parte 148*, handed down as late as March 2, 1942, and also upon the evidence which was before the Commission and the facts found by the Commission in that proceeding. Respondents also relied upon other facts set forth in their petition to the Commission of July 14, 1942, as reference to that petition will disclose. The Commission had before it the entire record in *Ex Parte 148* when, in response to the petition of July 14, 1942, it amended its order in said proceeding for the specific purpose of enabling these respondents to establish a coach fare upon the level which it had approved for general application throughout the entire United States.

In answer to the remaining portion of this part of the protest, attention is directed to the fact that in *Ex Parte 148* the Commission had before it a complete picture of the financial condition of the Southern lines, all economic conditions, and all other matters referred to by protestant.

V

With reference to the matters set out by protestant under the headings "Passenger Revenues of Respondent Carriers Best in Years" and "Passenger Service Operating Ratios" respondents say:

It is, of course, true that there has been a substantial and progressive increase in passenger travel and revenues in the first 7 months of 1942, as compared with the same period for the preceding year, or with previous years. This is true not only in the Southern territory but throughout the entire United States. Respondents have not had an opportunity to study the revenue and traffic statistics shown in the Exhibits attached to protestant's application for suspension, but point out that these data are wholly insufficient to sustain protestant's position, for the reasons given below:

1. The statistics used by protestant relate to the total passenger movement in the Southern Region without separa-

tion as between coach and sleeping car traffic, whereas the increase in fares sought relates only to coach travel, the revenue from which aggregates less than 50 percent of the [fol. 2054] total. Moreover, this 50 percent includes a substantial volume of travel by furloughed military personnel at a fare of 1¼ cents per mile, upon which no increase is proposed. Again it should be mentioned that the statistics for the Southern Region include revenue and traffic data relating to railroads which had in effect in 1942 a basic coach fare of 2 cents per mile (2.2 cents per mile effective February 10, 1942). The contribution of these particular railroads to the totals used is substantial in amount.

2. Neither the protest nor the statistics present any information as to the unprecedented increase in costs which has attended the increase in revenues. An increase in gross passenger revenues is in no wise indicative of a corresponding increase in the net revenue result of passenger operations. This is true particularly when the increase in traffic has involved heavy special movements of the armed forces of the United States, as has been the case, with the attendant increases in expenses resulting directly from such movements, as well as from the handling of empty equipment to and/or from origins and destinations. Incidentally, the effect of these costly special movements is clearly reflected in the statistics on page 1, column 2, of protestant's Exhibit A, where average number of passengers per car during the first 6 months of 1942 is shown as only 21.2. Obviously, this average is depressed by the inclusion of the heavy movements of empty equipment referred to above.

3. Figures showing the operating expenses applicable to passenger operations for the year 1942 to date are not available and can not be produced within a reasonable time. However, it is evident that the full impact of increases in labor pay granted in 1941 will not be fully evident until the figures for the year 1942 are available. Moreover, 1942 operating costs unquestionably will reflect increases over 1941 in costs of materials and supplies.

4. In addition to ignoring increased operating expenses attending the existing heavy volume of passenger business, the protest and supporting statistics give no adequate con-

sideration to the tax burden which will attach to any increase in passenger revenues.

Protestant's Exhibit B shows certain figures which purport to be the accruals of the railroads in the several regions for Federal income taxes during the first 7 months of the years 1942 and 1941. The source of these figures is said to have been data on file with the Interstate Commerce Commission, but respondents are not aware that any reports [fol. 2055] showing such information are filed with the Commission except on a calendar year basis. However, irrespective of the source, the information shown can not be accepted as correct, inasmuch as the amount of Federal income taxes applicable to the year 1942 cannot yet be determined.

5. Protestant's petition and statistics give no consideration to the matter of a return on the investment of the carriers in the road and equipment used in performing passenger service. This is an element which unquestionably should be considered in any comparison.

VI

Respondents specifically deny the allegation in said protest that they are "seeking to take advantage of present war conditions". The allegations of this portion of the protest have no particular application to these respondents but would apply with equal force to railroads throughout the country, including those roads whose fares are already on the level which respondents are here proposing to make effective.

Respondents also deny that in their petition of July 14, 1942, it is alleged that the principal reason for this proposed increase is "the feeling on their part that due to war conditions which have seriously affected their competition they are able to increase these rates." Respondents did allege in said petition that conditions existing at the present time are materially different from those which obtained prior to 1941, and that, in their opinion, if the proposed increase should become effective it would not result in any reduction in the volume of passenger travel, but, on the other hand, would bring about a substantial increase in petitioner's revenues from passenger operations. If it be true, however; that the proposed increase in passenger fares would have a tendency to bring about some reduction in passenger

travel in coaches, it may be said that this would be in line with the policy of the Director of the Office of Defense Transportation.

VII

Further answering protestant's petition and summarizing in part, respondents say:

1. The fares which respondents are seeking to make effective have been approved by this Commission for application throughout the United States, including the South. These fares apply today everywhere in the country excepting only over the lines of respondents.

[fol. 2056] 2. The only reason the fares which respondents are seeking to make effective are not now in effect is because of the voluntary continuance by respondents of the present low "experimental" fares which were made effective at a time when respondents' coaches were almost empty and respondents were trying to get passengers on the trains.

3. The conditions which brought about the establishment by respondents of the present extremely low coach fares, which, in effect, may be termed "excursion" fares, no longer exists, and, therefore, there is no occasion for respondents to continue such fares. The fares which respondents are seeking to make effective were not published for the purpose of discouraging travel. They were published for the purpose of placing passenger fares in the South on a fair basis, and on the same basis as applies throughout the entire United States. If as a result of these fares there should be some reduction in unnecessary travel, it may be said that this would be in line with the policy of the Director of the Office of Defense Transportation.

4. Protestant speaks of "relatives and friends of men in the armed forces who unable to use private automobiles are using railroad coach transportation to and from the various Army camps scattered throughout southern territory". Respondents are not seeking to charge "relatives and friends" of men in the service more than "relatives and friends" of men in the service are now paying generally for passenger transportation in the North, East, and West. Moreover, these "relatives and friends", if the proposed fares become effective, can still travel to and from the Army.

camps by buying round-trip tickets at less than 2 cents per mile. Moreover, the soldier and sailor in uniform on furlough can still travel over respondents' lines at 1¼ cents per mile.

5. It is noticeable that the protestant does not give any reason why he insists on fares over the lines of these respondents lower than the fares applying today elsewhere throughout the United States and over certain important lines in Southern territory. Why should one travel in a day coach over a Southern line at less per mile than is being paid today over the great trunk lines of the country north and west, fares which have been approved repeatedly by this Commission?

[fol. 2057] VIII

Premises considered, respondents pray that the Commission decline to suspend their tariffs increasing certain coach fares, as prayed by protestant, and permit said tariffs to become effective as scheduled.

Respectfully submitted. M. B. Duggan, Chairman, Southern Passenger Association. F. W. Gwathmey, W. A. Northcutt, W. N. McGehee, Seddon G. Boxley, Attorneys for Respondents.

Washington, D. C., September 25, 1942.

[fol. 2058]

EXHIBIT No. 21
ICC Docket 28963

EXHIBIT No. 3
Docket No. I&S 8618—Witness: Beight
Before the Public Service Commission of the State of Alabama in the Matter of Proposed Increase in Passenger Fares

[fol. 2059]

State of Alabama
Class I Railroads
Net Railway Operating Deficit—Passenger
(As required to be computed by Interstate Commerce Commission and annually reported thereto)

Road	1936	1937	1938	1939	1940	1941	Average
Alabama Great Sou.	$448,904	$355,008	$517,617	$568,243	$585,759	$32,693	$418,037
Atlanta, Bgham. & Coast	194,897	282,604	276,645	220,882	224,161	308,510	251,283
Atlantic Coast Line	2,790,052	2,492,414	3,518,586	4,291,109	4,194,042	1,200,663	3,081,144
Central of Georgia	1,453,501	1,532,499	1,817,508	1,699,567	1,879,644	1,190,126	1,595,474
Gulf, Mobile & Ohio	1,006,978	994,335	1,047,561	1,107,153	1,308,317	1,180,424	1,107,461
[illegible]is Central	5,605,522	2,952,394	3,641,717	3,864,562	4,604,410	4,377,460	4,174,344
Louisville & Nashv.	5,429,064	5,887,764	6,556,946	6,404,436	6,815,661	4,915,654	6,001,588
Nashv., Chatta. & St. L.	648,694	761,372	824,626	841,791	764,263	675,092	752,640
St. Louis-San Fran.	4,569,015	4,676,233	5,106,317	4,789,464	4,423,543	3,349,768	4,485,723
Seaboard Air Line	3,953,652	3,207,798	4,083,514	2,997,095	2,807,430	1,033,934	3,013,904
Southern	3,951,429	4,176,195	4,994,845	4,873,672	5,222,582	927,503	4,024,371
Western Ry. of Ala.	83,250	102,261	77,417	100,575	103,492	54,597	86,932

Source: Annual Reports to Interstate Commerce Commission.

[fol. 2060]

State of Alabama
Class I Railroads
Account 102—Passenger Revenue

Road	1936	1937	1938	1939	1940	1941	Average
A G S	$628,735	$733,313	$626,567	$575,868	$654,159	$1,269,901	$748,091
A B & C	202,612	192,978	186,021	195,048	227,312	326,212	221,697
A C L	6,762,961	7,789,061	6,916,346	6,505,631	7,863,738	11,817,851	7,942,598
Cent. of Ga.	1,412,130	1,503,768	1,212,361	1,178,602	1,330,316	2,091,309	1,454,748
G. M. & O.	699,827	750,949	615,880	551,658	532,344	619,770	628,405
Ill. Cent.	9,200,930	9,890,436	9,097,430	8,807,811	9,211,165	11,491,056	9,616,471
L & N	6,594,986	7,208,546	6,199,037	6,013,271	6,474,811	8,976,429	6,911,180
N C & St. L	1,116,144	1,207,133	1,050,783	1,078,102	1,163,813	1,706,194	1,220,362
St. L. SF	3,428,601	3,775,072	3,310,600	3,215,508	3,165,201	4,900,875	3,632,643
S A L	4,626,017	5,532,973	4,948,880	6,312,965	7,526,443	11,026,177	6,662,243
Sou.	9,869,700	10,440,026	8,800,233	8,753,912	9,177,690	14,232,778	10,212,390
W. Ry. of Ala.	283,655	308,643	282,817	281,301	294,080	392,978	307,246
Total	$44,826,298	$49,832,898	$43,246,955	$43,469,677	$47,621,072	$68,851,530	$49,558,074

Source: Annual Reports to I.C.C.

[fol. 2061]

State of Alabama
Class I Railroads
Percent by Which (102) Passenger Revenue Would Have to Be Raised in Order to Wipe Out Net Railway Operating Deficit from Passenger Operations

Road	1936	1937	1938	1939	1940	1941	Average
Alabama Great Southern	71%	48%	83%	99%	90%	3%	56%
Atlanta, Birmingham & Coast	96%	146%	149%	113%	99%	95%	113%
Atlantic Coast Line	41%	32%	51%	66%	53%	10%	39%
Central of Georgia	103%	102%	150%	144%	141%	57%	110%
Gulf, Mobile & Ohio	144%	132%	170%	201%	246%	190%	176%
Illinois Central	61%	30%	40%	44%	50%	38%	43%
Louisville & Nashville	82%	82%	106%	107%	105%	55%	87%
Nashville, Chatta. & St. Louis	58%	63%	78%	78%	66%	40%	62%
St. Louis & San Francisco	133%	124%	154%	149%	140%	68%	123%
Seaboard Air Line	85%	58%	83%	47%	37%	9%	45%
Southern	40%	40%	57%	56%	57%	7%	39%
Western Ry. of Alabama	29%	33%	27%	36%	35%	14%	28%

[fol. 2062]

State of Alabama

Class I Railroads

Miles of Road Operated at Close of Year

Road	1936	1937	1938	1939	1940	1941	Average
			A—System				
A G S	315	315	315	315	315	315	315
A B & C	639	639	639	639	639	639	639
A C L	5,102	5,105	5,108	5,104	5,099	5,010	5,088
C of Ga	1,927	1,927	1,871	1,871	1,864	1,816	1,879
G M & O	2,138	2,130	2,004	2,004	1,973	1,969	2,036
Ill. Cent	4,967	4,951	4,949	4,948	4,949	4,951	4,953
L & N	4,944	4,938	4,925	4,871	4,871	4,803	4,892
N C & St. L	1,130	1,116	1,116	1,111	1,111	1,111	1,116
St. L & SF	4,927	4,885	4,843	4,820	4,769	4,766	4,835
S A L	4,308	4,318	4,317	4,314	4,310	4,307	4,312
Sou	6,732	6,703	6,690	6,614	6,584	6,519	6,640
W. Rv. of Ala	133	133	133	133	133	133	133
Total	37,262	37,160	36,910	36,744	36,617	36,339	36,838
			B—In Alabama				
A G S	261	261	261	261	261	261	261
A B & C	154	154	154	154	154	154	154
A C L	248	248	248	248	248	248	248
C of Ga	578	578	578	578	571	523	568
G M & O	457	449	435	435	405	404	431
Ill. Cent	128	128	128	128	128	128	128
L & N	1,172	1,172	1,171	1,171	1,171	1,171	1,171
N C & St L	113	113	113	112	112	112	113
St. L & SF	342	342	340	340	340	342	341
S A L	209	209	209	209	209	209	209
Sou	975	975	975	1,070	1,070	1,070	1,023
W Ry. of Ala	133	133	133	133	133	133	133
Total	4,770	4,762	4,745	4,839	4,802	4,755	4,780

Source: Annual Reports to Interstate Commerce Commission.

[fol. 2063]

State of Alabama

Class I Railroads

Net Railway Operating Deficit from Passenger Operations per Mile of Road Operated at Close of Year
(Average Year of Six—1936–1941)

Road	Entire Line			Apportioned to Alabama		
	Miles	Per Mile	Total	Miles	Per Mile	Total
Alabama Great Southern	315	$1,327	$418,037	261	$1,327	$346,347
Atlanta, Bgham. & Coast	639	393	251,283	154	393	60,522
Atlantic Coast Line	5,088	606	3,081,144	248	606	150,288
Central of Georgia	1,879	849	1,595,474	568	849	482,232
Gulf, Mobile & Ohio	2,036	544	1,107,461	431	544	234,404
Illinois Central	4,963	843	4,174,344	128	843	107,904
Louisville & Nashville	4,892	1,227	6,001,588	1,171	1,227	1,436,817
Nashville, Chatta. & St. L.	1,116	674	752,640	113	674	76,162
St. Louis & San Francisco	4,835	928	4,485,723	341	928	316,448
Seaboard Air Line	4,312	699	3,013,904	209	699	146,091
Southern	6,640	606	4,024,371	1,023	606	619,938
W. Ry. of Alabama	133	654	86,932	133	654	86,982
Total	36,838	$787	$28,992,901	4,780	$850	$4,064,195

Source: Annual Reports to Interstate Commerce Commission.

Southern Region

Revenues, Expenses and Net Income

Railways of Class I—Years 1921–1941

Year	Investment in Railway property used in transportation service a	Total operating revenues	Total operating expenses	Taxes	Net Railway operating income			Net Income
					Amount	Rate of return		
1921	$2,544,543,695	$684,727,318	$589,349,969	$30,058,104	$57,840,946	2.27%		$7,841,591
1922	2,591,156,704	711,489,119	554,924,589	37,636,117	109,666,782	4.23		55,791,992
1923	2,740,319,955	807,900,577	627,558,235	42,177,128	129,644,627	4.73		77,507,509
1924	2,848,043,577	787,949,317	594,875,149	44,982,899	142,445,074	5.00		86,311,303
1925	2,939,626,741	846,581,262	610,488,300	50,957,634	167,565,759	5.60		112,068,078
1926	3,155,883,365	874,464,159	646,031,708	53,857,054	163,046,381	5.17		105,154,742
1927	3,236,589,190	813,166,422	618,642,232	50,644,073	136,488,599	4.22		77,275,619
1928	3,292,527,033	771,814,281	582,088,993	50,940,833	133,545,258	4.06		72,234,499
1929	3,324,161,166	767,324,856	579,047,334	51,147,375	132,634,559	3.99		73,059,468
1930	3,338,881,112	641,628,178	503,008,762	42,974,495	88,405,628	2.65		30,860,679
Avg. 1921–30	3,006,173,253	770,704,548	591,201,527	45,537,572	126,128,361	4.20		69,810,548
1931	3,321,736,996	515,584,069	424,823,685	36,863,350	44,119,880	1.33	Def.	22,562,485
1932	3,300,356,863	377,781,440	312,379,830	31,784,693	25,802,843	0.78	Def.	48,626,465
1933	3,245,727,101	388,514,453	291,234,184	28,256,926	59,677,490	1.84	Def.	16,048,078
1934	3,214,398,995	408,242,449	315,267,590	27,034,974	54,520,803	1.70	Def.	19,228,469
1935	3,182,822,004	429,651,453	342,529,025	28,079,336	49,301,947	1.55	Def.	24,736,251
1936	3,174,468,831	500,904,542	371,241,330	37,018,915	80,146,408	2.52		10,743,969
1937	3,155,343,353	516,590,873	390,555,654	39,199,291	74,160,012	2.35		6,601,155
1938	3,173,336,647	471,305,776	357,486,929	42,056,626	60,204,023	1.90	Def.	9,734,450
1939	3,183,259,365	512,031,356	378,090,055	43,853,775	79,592,778	2.50		11,667,811
1940	3,184,435,186	545,276,358	404,502,838	48,683,247	81,939,906	2.57		15,726,381
1941	3,273,594,731	698,242,859	472,968,083	76,416,137	138,673,394	4.24		74,845,799
Avg. 1931–41	$3,219,043,642	$487,647,784	$369,189,018	$39,926,115	$68,012,680	2.11	Def.	$1,941,008
Avg. 1921–41	$3,117,676,790	$622,436,719	$474,909,261	$42,598,237	$95,686,814	3.07		$32,226,400

Def.—Denotes Deficit. a Includes allowance for working capital.

Source: Association of American Railroads.
Bureau of Railway Economics.

[fol. 2065]

State of Alabama

Class I Railroads

Average Annual Rate of Return—1921–41, Inclusive

Road	Investment in Railway Property Used in Transportation Service, including Cash and Materials and Supplies	Net Operating Railway Income	Rate of Return
Alabama Great Southern	$36,316,487	$1,588,738	4.37
Atlanta, Birmingham & Coast	23,252,435	*d* 297,937	*d* 1.28
Atlantic Coast Line	285,220,330	8,313,051	2.91
Central of Georgia	104,444,459	2,606,397	2.50
Gulf, Mobile and Ohio	102,912,783	2,747,314	2.67
Illinois Central	585,640,173	18,759,485	3.20
Louisville & Nashville	467,330,842	17,413,513	3.73
Nashville, Chatta. & St. Louis	98,812,870	2,290,384	2.32
St. Louis-San Francisco	423,906,779	12,058,473	2.84
Seaboard Air Line	284,315,781	5,658,915	1.99
Southern	610,833,995	21,774,961	3.56
Western Ry. of Alabama	9,688,052	272,015	2.81

d—denotes deficit.

Source: Association of American Railroads—Bureau of Railway Economics.

997

[fol. 2066]

State of Alabama

Class I Railroads

Average Rates of Return, 1921–41

Weighted in Proportion to Miles of Road Operated at Close of Year 1941

Road	Entire Line			In State of Alabama		
	Miles	Return	Weighting	Miles	Return	Weighting
Alabama Great Southern	315	4.37	1,377	261	4.37	1,141
Atlanta, Bgham. & Coast	639	*d* 1.28	*d* 818	154	*d* 1.28	*d* 197
Atlantic Coast Line	5,0[illegible]	2.91	14,579	248	2.91	722
Central of Georgia	[illegible],816	2.50	4,540	523	2.50	1,308
Gulf, Mobile & Ohio	1[illegible],9	2.67	5,257	404	2.67	1,079
Illinois Central	4,9[illegible]	3.29	15,843	128	3.20	410
Louisville & Nashville	4,803	3.73	17,915	1,171	3.73	4,368
Nashville, Chatta. & St. L.	1,111	2.32	2,578	112	2.32	260
St. Louis-San Francisco	4,766	2.84	13,535	342	2.84	971
Seaboard Air Line	4,307	1.99	8,571	209	1.99	416
Southern	6,519	3.56	23,208	1,070	3.56	3,809
Western Ry. of Alabama	133	2.81	374	133	2.81	374
Weighted	36,339	2.94	106,959	4,755	3.08	14,661

d—denotes deficit.

[fol. 2067]

State of Alabama

Class I Railroads

Fact and Extent of Revenue Need

Average Year of 21 (1921–41, Inclusive)

Weighted in Proportion to Miles of Road Operated at Close of Year 1941

Road	Entire Line			In State of Alabama		
	Miles	Ratio	Weighted	Miles	Ratio	Weighted
Alabama Great Sou.	315	105	33,075	261	105	27,405
Atlanta, Bgham. & Coast	639	139	88,821	154	136	21,406
Atlantic Coast Line	5,010	113	566,130	248	113	28,024
Central of Georgia	1,816	115	208,840	523	115	60,145
Gulf, Mobile & Ohio	1,969	114	224,466	404	114	46,056
Illinois Central	4,951	112	554,512	128	112	14,336
Louisville & Nashville	4,803	108	518,724	1,171	108	126,468
Nashville, Chatta. & St. L.	1,111	117	129,987	112	117	13,104
St. Louis-San Francisco	4,766	118	562,388	342	118	40,356
Seaboard Air Line	4,307	121	521,147	209	121	25,289
Southern	6,519	111	723,609	1,070	111	118,770
West. Ry. of Alabama	133	110	14,630	133	110	14,630
Weighted	36,339	114	4,146,329	4,755	113	535,989

[fol. 2068]

State of Alabama

Class I Railroads

Elements of Value of Property Used in Common Carrier Service as of January 1, 1940

Road	Basis A	Basis B	Current Appraisal		Capital Outlay	
	Production Cost	Reproduction Estimate	Lands	Working Capital	Basis A	Basis B
Alabama Great Southern	$35,341,407	$36,599,880	$3,198,083	$230,100	$38,769,590	$40,028,063
Atlanta, Bgham. & Coast	24,270,485	31,906,776	20,075,966	338,900	26,685,351	34,321,642
Atlantic Coast Line	261,004,816	303,319,011	20,864,432	3,542,800	285,412,048	327,726,243
Central of Georgia	106,525,026	127,121,978	11,127,123	979,500	118,631,649	139,228,601
Gulf, Mobile & Ohio	86,144,899	100,411,738	4,573,433	2,085,700	92,804,032	107,070,871
Ill. Cent. Co.	574,215,160	622,217,409	73,060,187	5,643,700	652,919,047	700,921,296
Louisville & Nashville	500,444,673	569,677,300	25,805,045	8,377,500	534,627,218	603,859,845
Nashville, Chatta. & St. L.	79,152,374	96,871,316	11,848,679	1,662,800	92,663,853	110,382,795
St. Louis-San Francisco	298,731,038	331,703,737	20,092,158	4,132,500	322,955,696	355,928,395
Seaboard Air Line	238,216,451	257,154,989	15,905,922	3,654,700	257,777,073	276,715,611
Southern Ry.	493,419,141	575,189,378	46,116,614	5,732,800	545,268,555	627,038,792
West. Ry. of Alabama	10,184,899	11,920,390	950,873	207,200	11,342,972	13,078,463
Total	$2,707,650,369	$3,064,093,902	$235,618,515	$36,588,200	$2,979,857,084	$3,336,300,617
Ratio	100	113			100	112

Source: Exhibit A-11, Ex Parte No. 148.

[fol. 2069]

EXHIBIT No. 22

Docket No. 4—Witness: Beight

Southern Railway Company

Eight Months Ended Aug. 31, 1941 and 1942, Respectively

	1941	1942
Total Operating Revenues	$88,450,213	$126,437,425
Total Operating Expenses	55,486,801	73,907,098
Total Railway Tax Accruals	10,085,242	22,489,579*
Net Operating Rents Payable or Receivable	2,123,371	1,962,957
Net Railway Operating Income	20,754,799	28,077,791
Operating Ratio, excluding Taxes and Rents	62.73	58.45
*Operating Ratio, including Taxes and Rents	76.54	77.79

Selected Passenger Revenue and Traffic Statistics

Seven Months Ended July 31, 1941 and 1942

(102) Passenger Revenue		
Coaches (other than Commutation)	$3,373,784	7,382,826
Parlor & Sleeping Cars	4,116,778	8,830,635
Number of Revenue Passengers Carried		
In Coaches (other than Commutation)	2,375,810	3,995,695
In Parlor and Sleeping Cars	476,722	885,751
Revenue Passengers Carried One Mile		
In Coaches (other than Commutation)	239,145,421	520,527,913
In Parlor and Sleeping Cars	174,729,426	322,861,841
Revenue per Passenger Mile (Cents)		
In Coaches (other than Commutation)	1.411	1.418
In Parlor and Sleeping Cars	2.356	2.735
Passenger Train Miles	6,508,087	6,893,852
Passenger Coach Miles	12,095,750	15,473,655
Sleeping and Parlor Car Miles	13,166,246	16,110,987
Revenue (other than Commutation) per Coach Mile (Cents)	27.89	47.71
Passenger Miles per Coach Mile	19.77	33.64
Revenue per Sleeping & Parlor Car Mile	31.27	54.81
Passenger Miles per Sleep. & Parlor Car Mile	13.27	20.04
Coach Miles per Train Mile	1.86	2.24
Sleeping & Parlor Car Miles per Train Mile	2.02	2.34

* Adjusted in accordance with present law.

[fol. 2070]

The Alabama Great Southern Railroad Company

Eight Months Ended Aug. 31, 1941 and 1942, Respectively

	1941	1942
Total Operating Revenues	$6,878,935	$12,214,099
Total Operating Expenses	4,335,342	6,303,953
Total Railway Tax Accruals	1,032,567	4,271,210*
Net Operating Rents Payable or Receivable	9,565	458,565
Net Railway Operating Income	$1,501,461	$1,180,371
Operating Ratio, excluding Taxes and Rents	63.02	51.61
*Operating Ratio, including Taxes and Rents	78.17	90.34

Selected Passenger Revenue and Traffic Statistics

Seven Months Ended July 31, 1941 and 1942

(102) Passenger Revenue		
Coaches (Other than commutation)	$294,767	$595,614
Parlor and Sleeping Cars	387,027	772,717
Number of Revenue Passengers Carried		
In Coaches (other than Commutation)	200,986	316,268
In Parlor and Sleeping Cars	90,199	188,470
Revenue Passengers Carried One Mile		

In Coaches (other than commutation)	23,176,352	46,801,193
In Parlor and Sleeping Cars	18,360,077	34,855,423
Revenue per Passenger Mile (cents)		
In Coaches (other than commutation)	1.272	1.273
In Parlor and Sleeping Cars	2.108	2.217
Passenger Train Miles	521,896	558,772
Passenger Coach Miles	1,177,814	1,386,708
Sleeping and Parlor Car Miles	1,152,911	1,405,981
Revenue (other than Commutation) per Coach Mile—(Cents)	25.03	42.95
Passenger Miles per Coach Mile	19.68	33.75
Revenue per Sleeping and Parlor Car Mile—(Cents)	33.57	54.96
Passenger Miles per Sleep. & Parlor Car Mile	15.92	24.79
Coach Miles per Train Mile	2.26	2.48
Sleeping and Parlor Car Miles per Train Mile	2.21	2.52

* Adjusted in accordance with present law.

[fol. 2071]

Atlantic Coast Line Railroad Company

Selected Passenger Statistics for Eight Months, Ending August 31, 1942 and 1941

	1942	1941
1. Total operating expenses	$70,335,197	$44,817,546
2. Total operating expenses	40,867,397	30,010,850
3. Total railway tax accruals	13,555,000	4,825,000
4. Net operating Rents—Payable or Receivable	2,124,228-D	1,609,653-D
5. Net railway operating income	13,788,571	8,372,043
6. Operating ratio, excluding taxes and rents	58.10	66.96
7. Operating ratio, including taxes and rents	80.40	81.32
Selected Passenger Revenue and Traffic Statistics		
8. Passenger revenue:		
(a) Coaches	$7,379,983	$4,393,796
(b) Parlor and sleeping	7,521,192	4,059,607
9. Number of revenue passengers carried:		
(a) In coaches	2,520,411	1,452,213
(b) In parlor and sleeping cars	783,088	402,585
10. Revenue passengers carried one-mile:		
(a) In coaches	$554,604,775	$320,563,489
(b) In parlor and sleeping cars	304,739,045	165,955,535
11. Passenger-train miles	5,919,014	5,400,565
12. Passenger-coach miles	17,333,016	13,701,360
13. Sleeping and parlor car miles	18,925,746	15,912,928
14. Revenue per coach-mile—cents	42.58	32.07
15. Passenger-miles per coach mile	32.00	23.40
16. Revenue per sleeping and parlor car mile	39.74	25.51
17. Passenger-miles per sleeping and parlor car mile	16.10	10.43
18. Coach-miles per train mile	2.93	2.54
19. Sleeping and parlor car miles per train mile	3.20	2.95

[fol. 2072]

Seaboard Air Line Railway Company

Selected Passenger Statistics for Eight Months, Ending August 31, 1942 and 1941

	1942	1941
1. Total operating revenues	$67,507,291	$41,492,630
2. Total operating expenses	41,305,140	30,838,391
3. Total Railway Tax accruals	3,300,000	2,585,000
4. Net operating Rents—Payable or Receivable	2,518,080	1,224,030
5. Net railway operating income	20,384,071	6,845,216
6. Operating ratio, excluding taxes and rents	61.19	74.32
7. Operating ratio, including taxes and rents	69.80	83.50

Selected Passenger Revenue and Traffic Statistics

8. Passenger revenue:		
(a) Coaches	$5,897,720	$3,571,416
(b) Parlor and sleeping	7,165,022	3,268,043
9. Number of revenue passengers carried:		
(a) In coaches	1,367,698	911,711
(b) In parlor and sleeping cars	572,402	268,814
10. Revenue passengers carried one mile:		
(a) In coaches	400,171,861	256,447,176
(b) In parlor and sleeping cars	260,386,354	127,492,379
11. Passenger-train miles	4,584,878	4,366,129
12. Passenger-coach miles	13,493,675	11,398,836
13. Sleeping and parlor car miles	14,147,383	10,898,695
14. Revenue per coach-mile—cents	43.71	31.33
15. Passenger-miles per coach mile	29.66	22.50
16. Revenue per sleeping and parlor car mile	50.65	29.99
17. Passenger-miles per sleeping and parlor car mile	18.41	11.70
18. Coach-miles per train mile	2.94	2.61
19. Sleeping and parlor car miles per train mile	3.09	2.50

[fol. 2073]

Central of Georgia Railway Company

Eight Months Ended August 31, 1941 and 1942, Respectively

	1941	1942
Total Operating Revenues	$14,172,387	$17,849,267
Total Operating Expenses	10,263,630	12,268,439
Total Railway Tax Accruals	1,063,169	1,579,499*
Net Operating Rents Payable or Receivable	209,228	147,526
Net Railway Operating Income	2,636,360	3,853,803
Operating Ratio, excluding Taxes and Rents	72.42	68.73
*Operating Ratio, including Taxes and Rents	81.40	78.41

Selected Passenger Revenue and Traffic Statistics
Eight Months Ended August 31, 1941 and 1942

(102) Passenger Revenue		
Coaches (other than Commutation)	$827,054	$1,489,295
Parlor and Sleeping Cars	517,718	1,069,276
Number of Revenue Passengers Carried		
In Coaches (other than Commutation)	671,125	1,016,479
In Parlor and Sleeping Cars	144,135	249,996
Revenue Passengers Carried One Mile		
In Coaches (other than Commutation)	58,014,445	94,979,092
In Parlor and Sleeping Cars	25,266,877	48,163,663
Revenue per Passenger Mile (Cents)		
In Coaches (other than Commutation)	1.425	1.568
In Parlor and Sleeping Cars	2.049	2.220
Passenger Train Miles	1,557,428	1,652,146
Passenger Coach Miles	3,296,733	4,197,295
Sleeping and Parlor Car Miles	2,619,223	3,177,650
Revenue (other than Commutation) per Coach Mile (Cents)	25.09	35.49
Passenger Miles per Coach Mile	17.60	22.63
Revenue per Sleeping and Parlor Car Mile (cents)	19.77	33.65
Passenger Miles per Sleeping and Parlor Car Mile	9.65	15.16
Coach Miles per Train Mile	2.12	2.54
Sleeping and Parlor Car Miles per Train Mile	1.68	1.92

* Adjusted in accordance with present law.

[fol. 2074]

EXHIBIT No. 23
ICC Docket 28963

EXHIBIT No. 5

Witness: Beight

Southern Railway Company

Eight Months Ended August 31, 1942

	Total	Freight	Passenger
1. Railway Operating Revenues	$126,437,425	$101,002,770	$25,434,655
2. Railway Operating Expenses	$73,907,098	$57,430,581	$16,476,517
3. Railway Tax Accruals other than Income and Federal Capital Stock Tax	6,254,705	4,859,355	1,395,350
4. Net Rents Payable	1,962,957	1,808,628	154,329
5. Outgo at this point	$82,124,760	$64,098,564	$18,026,196
6. Net Railway Operating Income at this Point	$44,312,665	$36,904,206	$7,408,459
7. Percent	100%	83%	17%
8. Federal & State Income and Federal Capital Stock Tax	16,234,874	13,474,945	2,759,929
9. Total Railway Operating Outgo	$98,359,634	$77,573,509	$20,786,125
10. Net Railway Operating Income	$28,077,791	$23,429,261	$ 4,648,530
11. Net Railway Operating Deficit from Passenger—			
	1936	$3,898,261	
	1937	4,121,888	
	1938	4,928,905	
	1939	4,808,631	
	1940	5,222,582	
	1941	927,503	$23,907,770
12. Net for 6-2/3 years			$19,259,240
13. Investment in Railway Property Used in Transportation Service (ICC AR Sch. 211N)			$611,678,846
14. (708) Cash			16,640,484
15. (716) Material and Supplies			8,796,645
16. Total as of December 31, 1941			$637,115,975
17. Return for One Year @ 5-3/4%			36,634,169
18. Return for Eight Months			24,422,780
19. Ratio Return to Revenues			10%
20. Passenger Service		Income	
21. First eight months of 1942		$25,434,655	
22. Allowance for return on Investment		81%	
23. Passenger revenue less return		20,602,071	
24. Net Railway Operating Outgo-Passenger		20,786,125	
25. Net Deficit from Passenger Operations		184,054	

[fol. 2075]

The Alabama Great Southern Railroad Company

Eight Months Ended August 31, 1942

	Total	Freight	Passenger
1. Railway Operating Revenue	$12,214,099	$10,059,592	$2,154,507
2. Railway Operating Expenses	6,303,953	5,027,442	$1,276,511

3. Railway Tax Accruals other than Income and Federal Capital Stock Tax	585,917	467,269	118,648
4. Net Rents Payable	458,565	270,192	188,373
5. Outgo at this point	$7,348,435	$5,764,903	$1,583,532
6. Net Railway Operating Income at this point	4,865,606	4,294,689	570,975
7. Percent	100.00	88.27	11.73
8. Federal & State Income and Federal Capital Stock Tax	3,685,293	3,250,428	434,865
9. Total Railway Operating Outgo	$11,033,728	$9,015,331	$2,018,397
10. Net Railway Operating Income	1,180,371	1,044,261	136,110
11. Net Railway Operating Deficit from Passenger—			
	1936	$448,904	
	1937	355,008	
	1938	517,617	
	1939	568,655	
	1940	585,759	
	1941	32,693	2,508,636
12. Net for 6-2/3 years			$2,372,526
13. Investment in Railway Property Used in Transportation Service (ICC AR Sch. 211N)			$39,029,428
14. (708) Cash			4,335,639
15. (716) Material and Supplies			363,174
16. Total as of December 31, 1941			$43,728,241
17. Return for One Year @ 5-3/4%			$2,514,374
18. Return for Eight Months			1,676,333
19. Ratio Return to Revenues			14%
20. Passenger Service		Income	
21. First Eight Months of 1942		$2,154,507	
22. Allowance for Return on Investment		86%	
23. Passenger Revenue less Return		1,852,876	
24. Net Railway Operating Outgo-Passenger		2,018,397	
25. Net Deficit from Passenger Operations		$165,521	

[fol. 2076] Atlantic Coast Line Railway Company

Eight Months ended August 31, 1942

	Total	Freight	Passenger
1. Railway operating revenues	$70,335,196	$52,047,577	$18,287,619
2. Railway operating expenses	40,867,397	27,857,977	13,009,420
3. Railway tax accruals other than income and Federal Capital Stock Tax	3,675,000	2,505,248	1,169,752
4. Net Rents Payable	2,124,228	1,717,794	406,434
5. Outgo at this point	$46,666,625	$32,081,019	$14,585,606
6. Net railway operating income at this point	23,668,571	19,966,558	3,702,013
7. Percent	100%	84.36%	15.64%
8. Federal and State Income and Federal Capital Stock Tax	9,880,000	8,334,768	1,545,232
9. Total railway operating outgo	$56,546,625	$40,415,787	$16,130,838

10. Net railway operating income		$13,788,571	$11,631,790	$2,156,781
11. Net railway operating deficit from passenger—	1936		$2,790,052	
	1937		2,492,414	
	1938		3,518,586	
	1939		4,291,109	
	1940		4,194,042	
	1941		1,200,663	$18,486,866
12. Net for 6-2/3 years				$16,330,085
13. Investment in railway property used in transportation service (I.C.C. Sch. 211N)				$288,575,404
14. Cash				12,044,923
15. Material and Supplies				6,148,886
16. Total (as of December 31, 1941)				$306,769,213
17. Return for one year @ 5-3/4%				17,639,230
18. Return for eight months at 5-3/4%				11,759,436
19. Revenues for first eight months of 1942				70,335,196
20. Ratio of return thereto				16.7%
21. Passenger service			Income	
22. First eight months of 1942			$18,287,619	
23. Allowance for return on investment			83.3%	
24. Passenger revenue less return			$15,233,587	
25. Net railway operating outgo—passenger			16,130,838	
26. Net deficit from passenger operations			$897,251	

[fol. 2077]

Seaboard Air Line Railway

Eight Months ended August 31, 1942

		Total	Freight	Passenger
1. Railway operating revenues		$67,507,291	$48,404,414	$19,102,877
2. Railway operating expenses		41,305,140	29,340,636	11,964,504
3. Railway tax accruals other than income and Federal Capital Stock Tax		3,300,000	2,344,122	955,878
4. Net Rents Payable		2,518,080	2,121,320	396,760
5. Outgo at this point		$47,123,220	$33,806,078	$13,317,142
6. Net railway operating income at this point		20,384,071	14,598,336	5,785,735
7. Percent		—	—	—
8. Federal and State income and Federal Capital Stock Tax		—	—	—
9. Total railway operating outgo		$47,123,220	$33,806,078	$13,317,142
10. Net railway operating income		$20,384,071	$14,598,336	$5,785,735
11. Net railway operating deficit from passenger—	1936		$3,953,652	
	1937		3,207,798	
	1938		4,083,514	
	1939		2,997,095	
	1940		2,807,430	
	1941		1,033,934	$18,083,423
12. Net for 6-2/3 years				$12,297,688
13. Investment in railway property used in transportation service (I.C.C. Sch. 211N)				$321,257,522
14. Cash				6,033,328
15. Material and Supplies				6,439,686

16. Total (as of December 31, 1941)		$333,730,536
17. Return for one year @ 5-3/4%		19,189,506
18. Return for eight months at 5-3/4%		12,793,004
19. Revenues for first eight months of 1942		67,507,291
20. Ratio of return thereto		19.0%
21. Passenger service	Income	
22. First eight months of 1942	$19,102,877	
23. Allowance for return on investment	81%	
24. Passenger revenue less return	$15,473,330	
25. Net railway operating outgo—passenger	13,317,142	
26. Net income from passenger operations	$2,156,188	

[fol. 2078]

Louisville & Nashville Railroad Company

Eight Months ended August 31, 1942

	Total	Freight	Passenger
1. Railway Operating Revenues	$105,427,895	$88,850,563	$16,577,332
2. Railway operating expenses	64,020,833	50,832,555	13,188,278
3. Railway tax accruals other than Income and Federal Capital Stock Tax	6,284,065	4,960,013	1,324,052
4. Net Rents Payable	1,286,917-D	1,696,561-D	409,644
5. Outgo at this point	$69,017,981	$54,096,007	$14,921,974
6. Net railway operating income at this point	36,409,914	34,754,556	1,655,358
7. Percent	100%	95.45%	4.55%
8. Federal and State Income and Federal Capital Stock Tax	23,027,940	21,980,169	1,047,771
9. Total railway operating outgo	$92,045,921	$76,076,176	$15,969,745
10. Net railway operating income	$13,381,974	$12,774,387	$607,587
11. Net railway operating deficit from passenger—			
	1936	$5,429,064	
	1937	5,887,764	
	1938	6,556,946	
	1939	6,404,436	
	1940	6,815,661	
	1941	4,915,654	36,009,525
12. Net for 6-2/3 years			$35,401,938
13. Investment in railway property used in transportation service (I.C.C. AR. Sch. 211N)			$470,911,426
14. Cash			34,863,525
15. Material and Supplies			11,572,630
16. Total (as of December 31, 1941)			$517,347,581
17. Return for one year @ 5-3/4%			29,747,486
18. Return for eight months @ 5-3/4%			19,831,658
19. Revenues for first eight months of 1942			105,427,895
20. Ratio of return thereto			18.8%
21. Passenger service		Income	
22. First eight months of 1942		$16,577,332	
23. Allowance for return on investment		81.2%	
24. Passenger revenue less return		$13,460,793	
25. Net railway operating outgo—passenger		15,969,745	
26. Net deficit from passenger operations		$2,508,952	

EXHIBIT No. 24

I. C. C. Docket 28963—Witness Beight

Southern Railway Company

Passenger Revenue—Hears 1937 to 1941, Incl. and First Seven Months of 1942 vs. First Seven Months of 1941

	Passenger Revenue (Excl. Commutation)			Passengers Carried 1 Mile		Revenue per Pass. 1 Mile	
	Coach	Pullman	Total	Coach	Pullman	Coach	Pullman
1937	$4,990,517	$5,419,338	$10,409,855	344,883,906	232,749,306	$.0145	$.0233
1938	3,639,535	5,138,585	8,778,120	199,576,186	212,729,574	.0182	.0242
1939	3,672,875	5,067,415	8,740,290	273,074,941	210,557,560	.0135	.0241
1940	3,966,756	5,210,813	9,177,569	307,338,176	221,463,557	.0129	.0235
1941	6,961,752	7,270,919	14,232,671	489,114,686	298,633,482	.0142	.0243
7 Mos. 1941	3,373,784	4,116,778	7,490,562	239,145,421	174,729,426	.0141	.0236
7 Mos. 1942	7,382,826	8,830,635	16,213,461	520,527,913	322,861,841	.0142	.0274
Inc. 1941 v. 1940	2,994,996	2,060,106	5,055,102				
Percent	75.50	39.54	55.08				
Inc. 7 Mos. 1942 v. 7 Mos. 1941	4,009,042	4,713,857	8,722,899				
Percent	118.83	114.50	116.45				

Intrastate Passenger Revenues

	D. C.	Virginia	N. C.	S. C.	Georgia	Fla.	Alabama	Miss.	Tenn.	Ky.	Indiana	Illinois	Total
1937	-0-	$214,974	$502,148	$220,448	$321,990	-0-	$264,625	$3,175	$222,529	$23,881	$20,167	$10,757	$1,804,694
1938	-0-	175,661	362,879	154,635	227,354	-0-	213,192	3,610	170,592	18,082	16,457	9,070	1,351,532
1939	-0-	165,541	367,711	160,564	232,356	-0-	192,769	2,316	167,508	16,132	14,614	8,334	1,327,845
1940	-0-	166,720	370,533	164,396	236,160	-0-	191,489	2,293	169,488	16,525	14,863	11,641	1,344,108
1941	-0-	206,463	453,054	193,708	287,850	-0-	229,617	2,769	207,524	18,265	17,863	10,647	1,627,760
7 Mos. 1941	-0-	109,739	241,051	103,685	154,182	-0-	122,896	1,468	110,660	10,133	9,527	6,147	869,488
7 Mos. 1942	-0-	192,287	420,159	177,460	261,177	-0-	209,141	2,530	193,290	14,892	16,846	8,943	1,496,725
Inc. 1941 v. 1940	-0-	39,743	82,521	29,312	51,690	-0-	38,128	476	38,036	1,740	3,000	D 1,994	283,652
Percent	-0-	23.84	22.27	17.83	21.89	-0-	19.91	20.76	22.44	10.53	20.18	8.54	21.10
Inc. 7 Mos. 1942 v. 7 Mos. 1941	-0-	82,548	179,108	73,775	106,995	-0-	86,245	1,062	82,630	4,759	7,319	2,796	627,237
Percent	-0-	75.22	74.30	71.15	69.40	-0-	70.18	72.34	74.67	46.97	76.82	45.49	72.14

D- Denotes Decrease.

The Alabama Great Southern Railroad Company

Passenger Revenue—Years 1937 to 1941, Incl., and First Seven Months of 1942 vs. First Seven Months of 1941

	Passenger Revenue (excl. Commutation)			Passengers Carried 1 Mile		Revenue per Pass. 1 Mile	
	Coach	Pullman	Total	Coach	Pullman	Coach	Pullman
1937	$428,140	$305,173	$733,313	29,934,732	13,009,684	$.0143	$.0235
1938	350,000	276,567	626,567	20,421,507	11,413,247	.0171	.0242
1939	311,804	264,064	575,868	23,254,385	10,729,631	.0134	.0246
1940	366,002	288,157	654,159	28,351,718	12,093,032	.0129	.0238
1941	663,626	606,275	1,269,901	52,008,608	28,187,173	.0128	.0215
7 Mos. 1941	294,767	387,027	681,794	23,176,352	18,360,077	.0127	.0211
7 Mos. 1942	595,614	772,717	1,368,331	46,801,193	34,855,423	.0127	.0222
Inc. 1941 v. 1940	297,624	318,118	615,742				
Percent	81.32	110.40	94.13				
Inc. 7 Mos. 1942 v. 7 Mos. 1941	300,847	385,690	686,537				
Percent	102.06	99.65	100.70				

	Intrastate Passenger Revenues				
	Tennessee	Georgia	Alabama	Mississippi	Total
1937	$20	$266	$127,115	$854	$128,255
1938	19	237	87,865	739	88,860
1939	14	219	82,088	706	83,127
1940	5	224	83,692	676	84,597
1941	3	175	88,316	563	89,057
7 Mos. 1941	2	119	50,234	399	50,754
7 Mos. 1942	1	112	63,572	456	64,141
Inc. 1941 v. 1940	D 2	D 49	4,624	D 113	4,460
Percent	D 40.00	D 21.88	5.53	D 16.72	5.27
Inc. 7 Mos. 1942 v. 7 Mos. 1941	D 1	D 7	13,338	57	13,387
Percent	D 50.00	D 5.88	26.55	14.29	26.38

D—Denotes Decrease.

[fol. 2081]

Atlantic Coast Line Railroad Company

Passenger Revenue—Years 1937 to 1941, Inc. and First Seven Months of 1942 vs. First Seven Months of 1941

	Passenger Revenue (Exc'l. Commutation)			Passengers Carried 1 Mile		Rev. Per Pass. 1 Mile	
	Coach	Pullman	Total	Coach	Pullman	Coach	Pullman
1937	$3,154,900	$4,634,023	$7,788,923	201,279,614	203,407,531	1.5784¢	2.2782¢
1938	2,594,907	4,321,263	6,916,170	143,458,178	177,621,081	1.8088	2.4329
1939	2,743,620	3,761,635	6,505,255	196,683,229	152,713,355	1.9349	2.4632
1940	3,943,695	3,919,847	7,863,542	293,435,674	164,092,048	1.3440	2.3888
1941	6,516,251	5,301,574	11,817,825	477,708,832	215,540,013	1.3641	2.4597
7 Mos. 1941	3,787,589	3,813,213	7,600,802	276,224,181	156,459,559	1.3712	2.4372
7 Mos. 1942	6,308,711	6,414,647	12,723,358	464,184,200	256,029,935	1.3591	2.5054
Inc. 1941 over 1940	2,572,556	1,381,727	3,954,283				
Percent	65.23%	35.25%	50.29%				
Inc. 7 Mos. 1942 over 7 Mos. 1941	2,521,122	2,601,434	5,122,556				
Percent	66.56%	68.22%	67.39%				

Intrastate Passenger Revenues

	Va.	N. C.	S. C.	Ga.	Fla.	Ala.	Total
1937	$45,941	$168,431	$111,476	$95,366	$271,709	$30,767¢	$723,690¢
1938	37,338	122,825	75,184	65,180	205,556	22,011	528,094
1939	31,002	106,239	73,099	63,592	189,044	25,889	488,865
1940	37,549	104,499	82,424	67,504	202,728	26,786	521,490
1941	55,280	139,406	100,673	73,834	225,260	28,622	623,075
7 Mos. 1941	33,817	77,297	58,130	41,356	125,679	14,717	350,996
7 Mos. 1942	42,511	107,707	77,133	66,339	240,856	32,305	566,851
Inc. 1941 over 1940	17,731	34,907	18,249	6,330	22,532	1,836	101,585
Percent	47.22%	33.40%	22.14%	9.38%	11.11%	6.86%	19.48%
Inc. 7 Mos. 1942 over 7 Mos. 1941	8,694	30,410	19,003	24,983	115,177	17,588	215,855
Percent	25.71%	39.34%	32.69%	60.41%	91.64%	119.51%	61.50%

Seaboard Air Line Railway

Passenger Revenue—Year 1937 to 1941, Inc. and First Seven Months of 1942 vs. First Seven Months of 1941

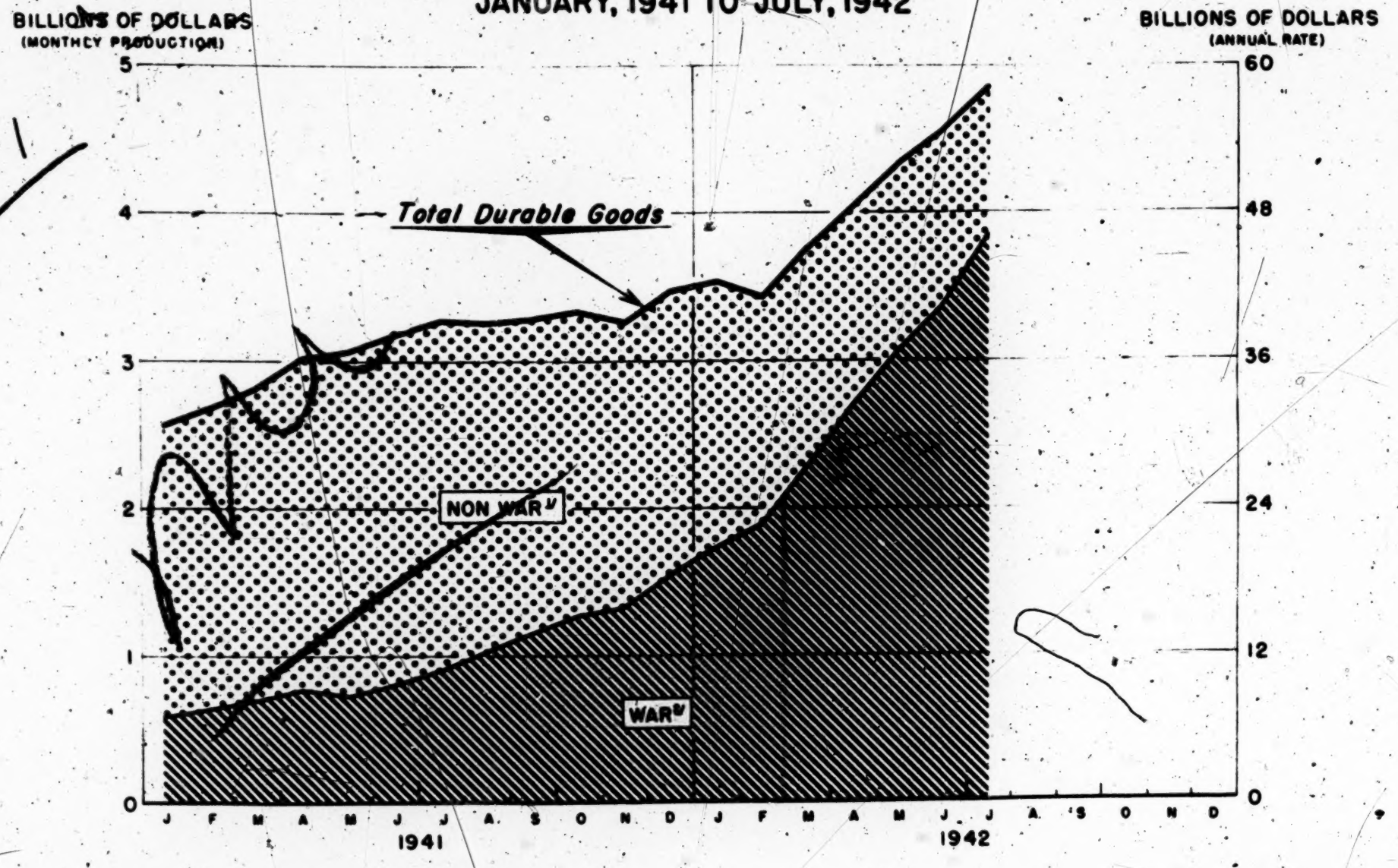
	Passenger Revenue (Exc'l. Commutation)			Passengers Carried 1 Mile		Rev. Per Pass. 1 Mile	
	Coach	Pullman	Total	Coach	Pullman	Coach	Pullman
1937	$2,831,297	$2,701,640	$5,532,937	189,684,100	118,219,973	$.0149	$.0229
1938	2,321,656	2,627,219	4,948,875	129,632,917	111,087,518	.0179	.0236
1939	3,299,145	3,013,804	6,312,949	228,809,547	128,179,130	.0144	.0235
1940	4,491,146	3,022,680	7,513,826	317,106,521	129,842,085	.0142	.0233
1941	6,279,069	4,739,591	11,018,660	452,214,413	183,785,109	.0139	.0258
7 Mos. 1941	3,571,416	3,268,043	6,839,459	256,447,176	127,492,379	.0139	.0256
7 Mos. 1942	5,897,720	7,165,002	13,062,722	400,171,861	260,386,354	.0147	.0275
Inc. 1941 over 1940	1,787,923	1,716,911	3,504,834				
Percent	39.81%	56.80%	46.65%				
Inc. 7 Mos. 1942 over 7 Mos. 1941	2,326,304	3,896,959	6,223,263				
Percent	65.14%	119.24%	97.40%				

	Intrastate Passenger Revenues						
	S. C.	Va.	N. C.	Ga.	Fla.	Ala.	Total
1937	$57,727	$35,752	$117,200	$146,318	$534,609	$22,430	$914,036
1938	38,615	26,761	81,928	99,107	448,832	17,084	712,326
1939	31,411	23,409	79,373	72,778	432,442	14,137	653,550
1940	30,209	21,987	76,490	69,371	458,838	14,306	671,202
1941	36,414	26,978	94,286	63,108	546,652	15,374	782,812
7 Mos. 1941	18,480	13,266	45,305	34,485	321,406	8,269	441,211
7 Mos. 1942	28,750	22,899	70,714	48,979	458,692	9,542	639,575
Inc. 1941 over 1940	6,205	4,991	17,796	6,263D	87,814	1,068	111,610
Percent	20.54%	22.70%	23.26%	9.03D	19.14%	7.47%	16.63%
Inc. 7 Mos. 1942 over 7 Mos. 1941	10,270	9,633	25,409	14,494	137,286	1,273	198,364
Percent	55.57%	72.61%	56.08%	42.03%	42.71%	15.39%	44.96%

D—Denotes Decrease.

PRODUCTION OF DURABLE GOODS
FOR WAR AND NON-WAR PURPOSES

JANUARY, 1941 TO JULY, 1942



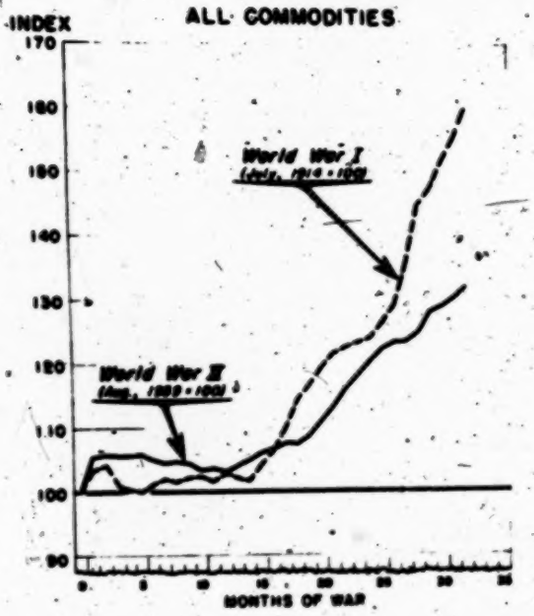
SOURCES Armaments, Merchant Ships, War Equipment: Statistics Division, War Production Board
Construction: Bureau of Foreign and Domestic Commerce, Dept. of Commerce.
Private Equipment, Consumers' Durable Goods: Office of Price Administration.

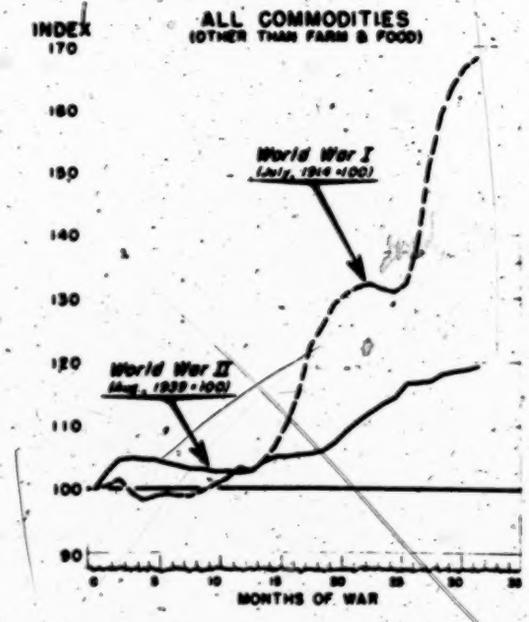
OFFICE OF PRICE ADMINISTRATION
DIVISION OF RESEARCH
RD. 2080

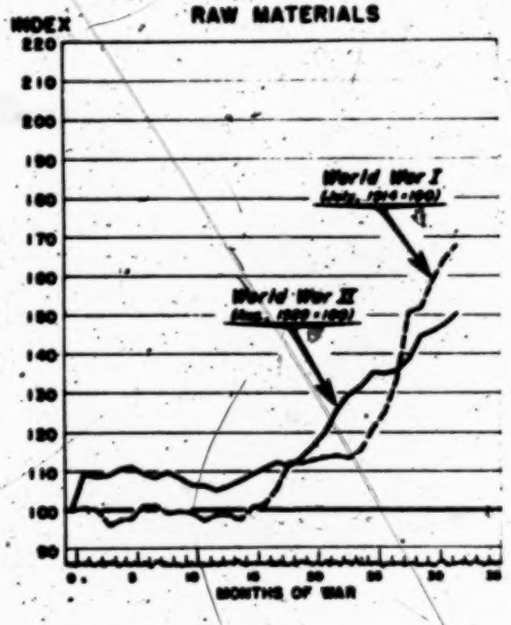
1/ Non-war goods include private equipment, private and non-war governmental construction, and consumers' durable goods, all on private account except non-war governmental construction.

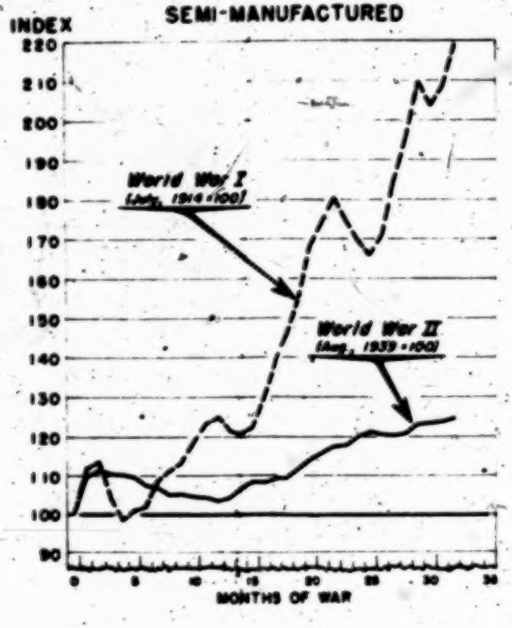
2/ War goods include armaments, war equipment, merchant ships and war construction, all on government account.

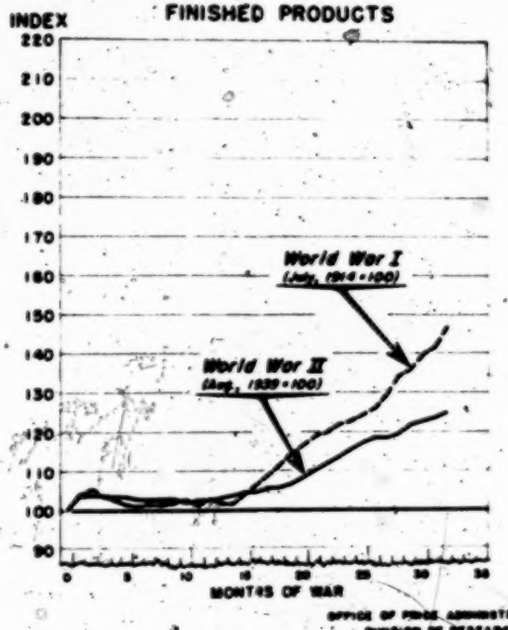
MONTHLY WHOLESALE PRICES
WORLD WARS I AND II







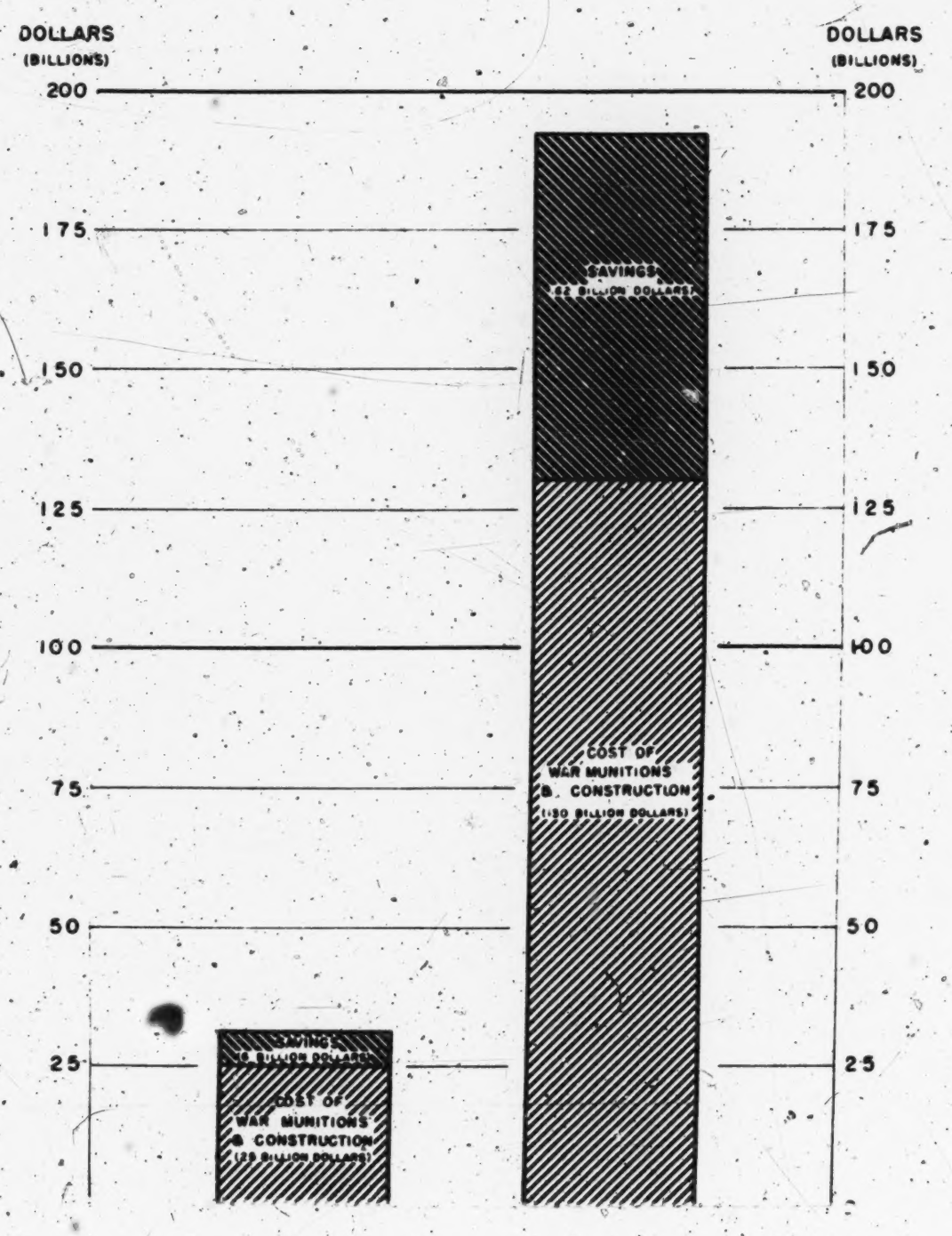


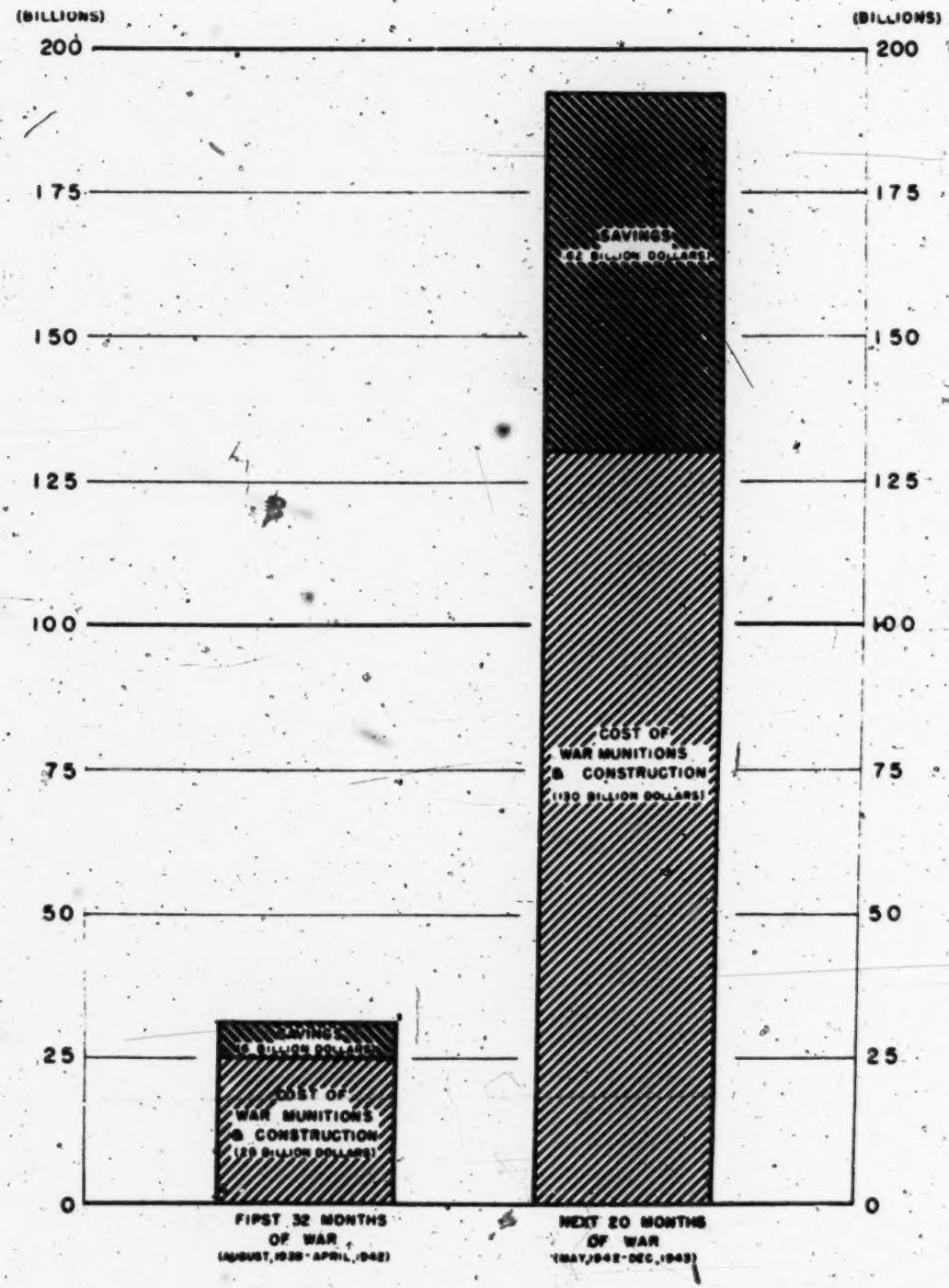


SOURCE: Bureau of Labor Statistics

OFFICE OF PRICE ADMINISTRATION
DIVISION OF RESEARCH
PRICE ANALYSIS AND REVIEW BRANCH
NO. 1153

SAVINGS ON COST OF WAR PROGRAM BY AVOIDING WORLD WAR I PRICE RISE*



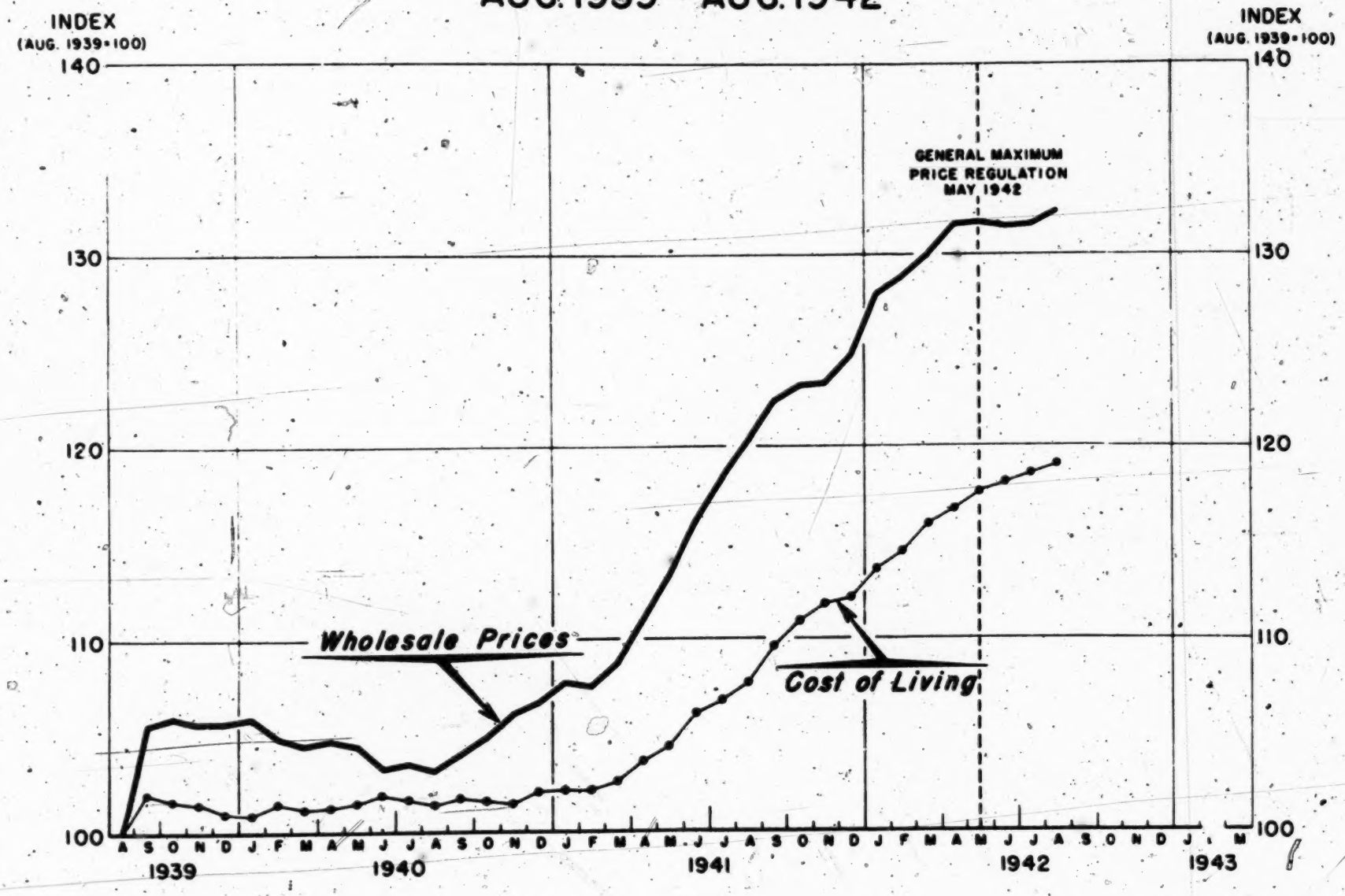


*Estimates based on difference between wholesale price rises of all commodities, other than farm products and foods in World War I & II as shown by Bureau of Labor Statistics indexes. Size of program based on War Production Board estimate.

OFFICE OF PRICE ADMINISTRATION
DIVISION OF RESEARCH
NO 1172

INDEXES OF WHOLESALE PRICES AND COST OF LIVING

AUG. 1939—AUG. 1942

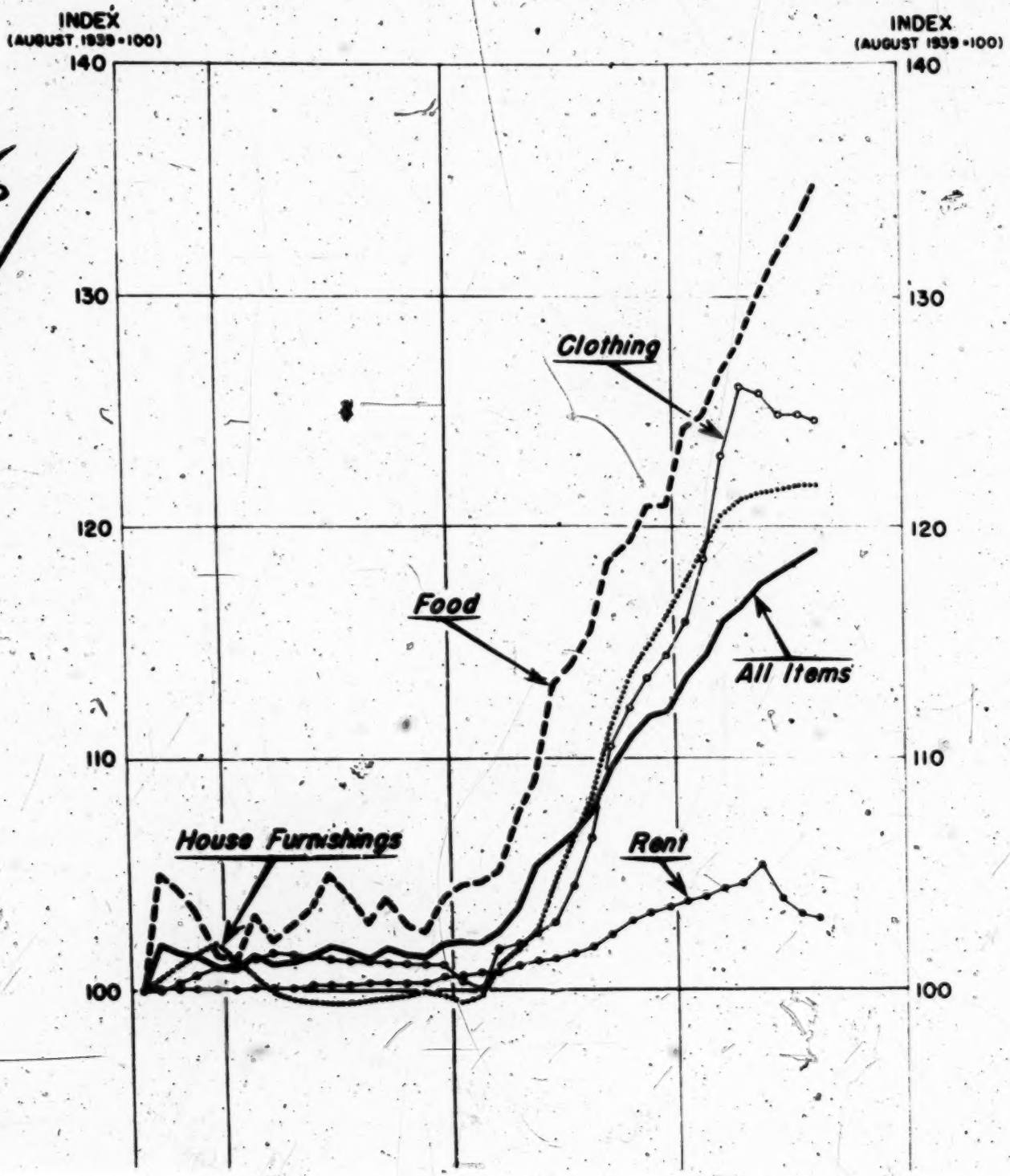


2086

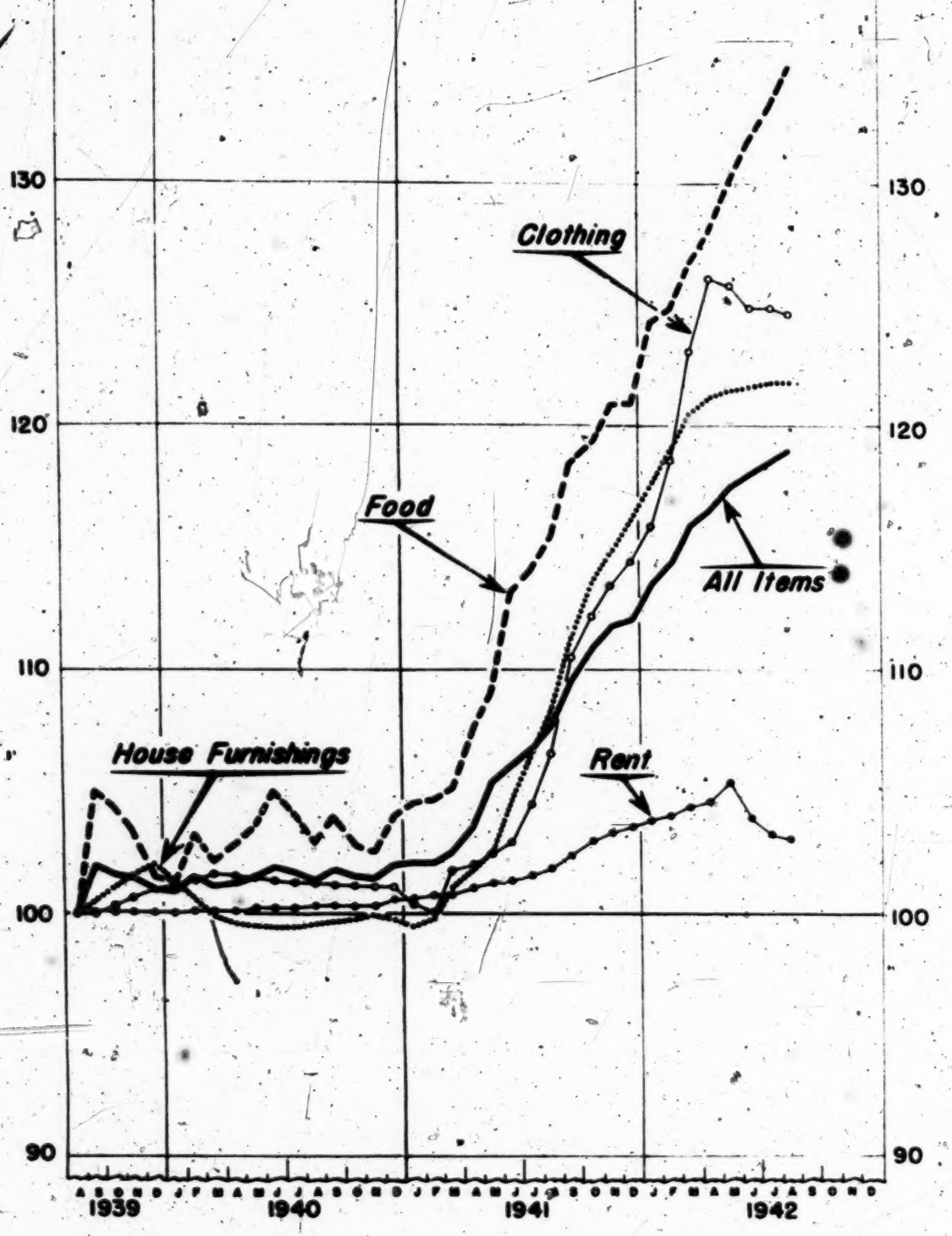
SOURCE U.S. Bureau of Labor Statistics.

OFFICE OF PRICE ADMINISTRATION
DIVISION OF RESEARCH
NO. 2073

PRICES OF SELECTED COST OF LIVING ITEMS



Sheet 5



SOURCE: United States. Bureau of Labor, Statistics.

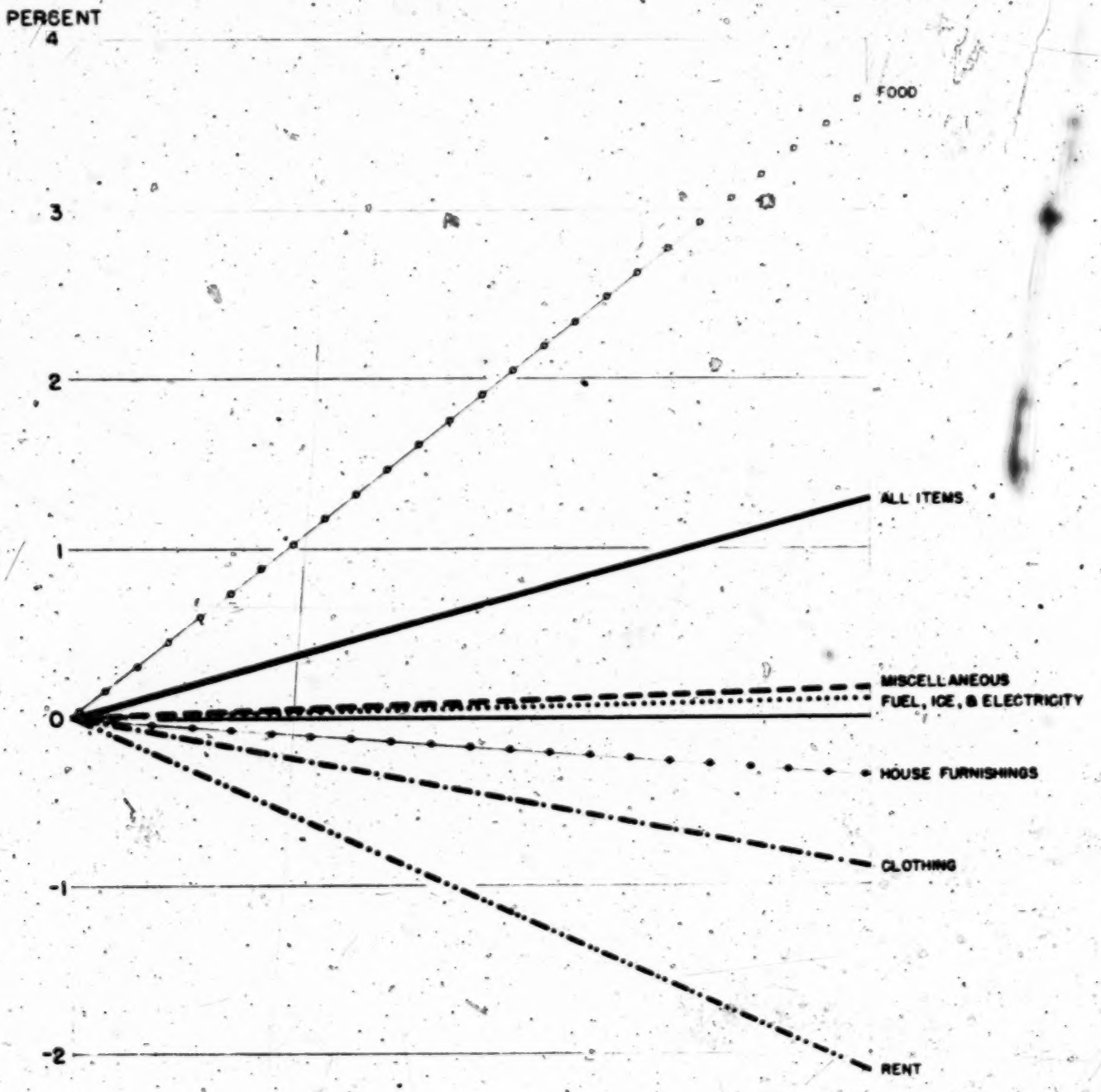
OFFICE OF PRICE ADMINISTRATION
DIVISION OF RESEARCH
8-6-1976

2087

1046

PERCENTAGE CHANGES IN COST-OF-LIVING ITEMS
MAY 15 AND AUGUST 15, 1942

Sheet 6

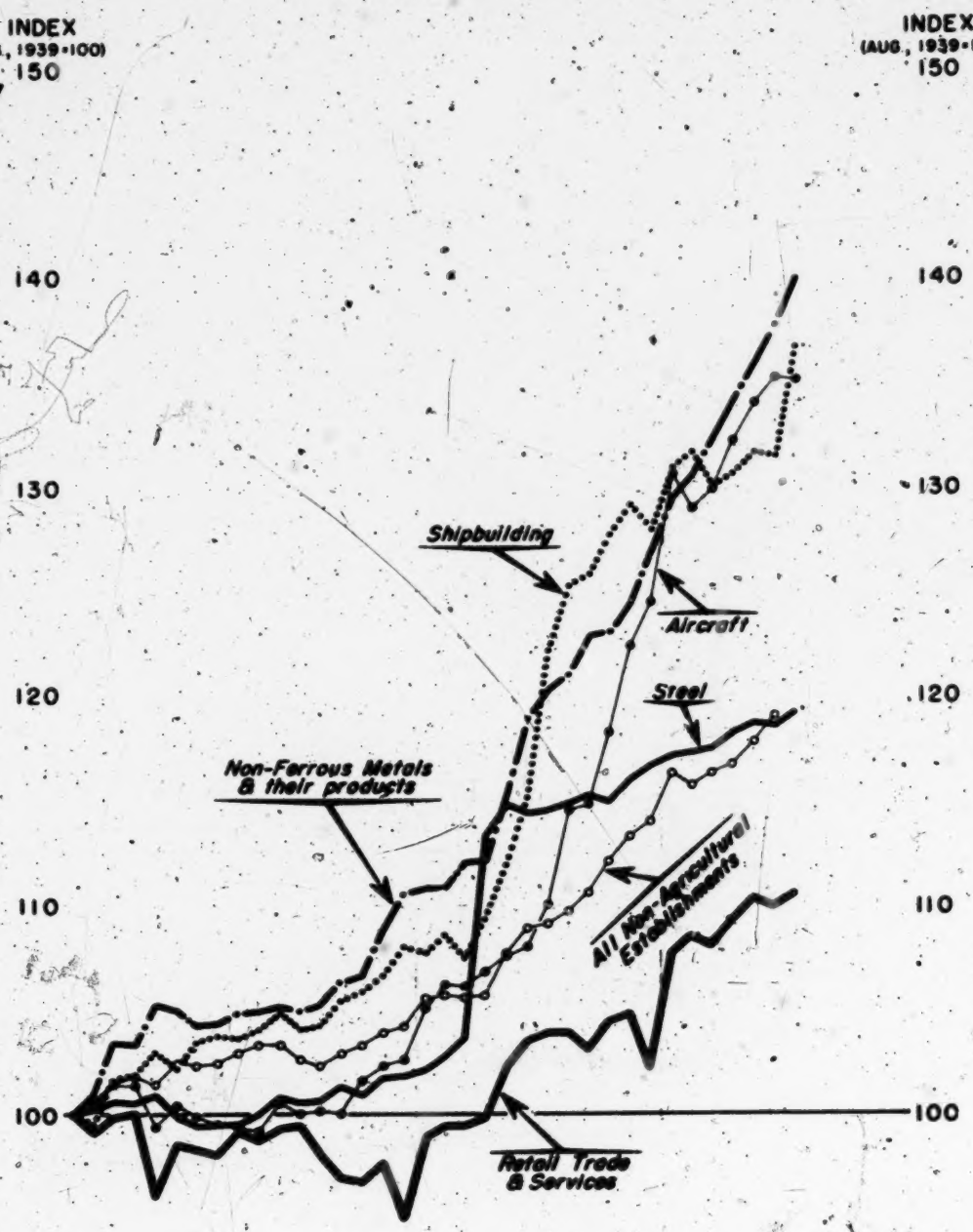


AVERAGE HOURLY EARNINGS IN SELECTED NON-AGRICULTURAL GROUPS

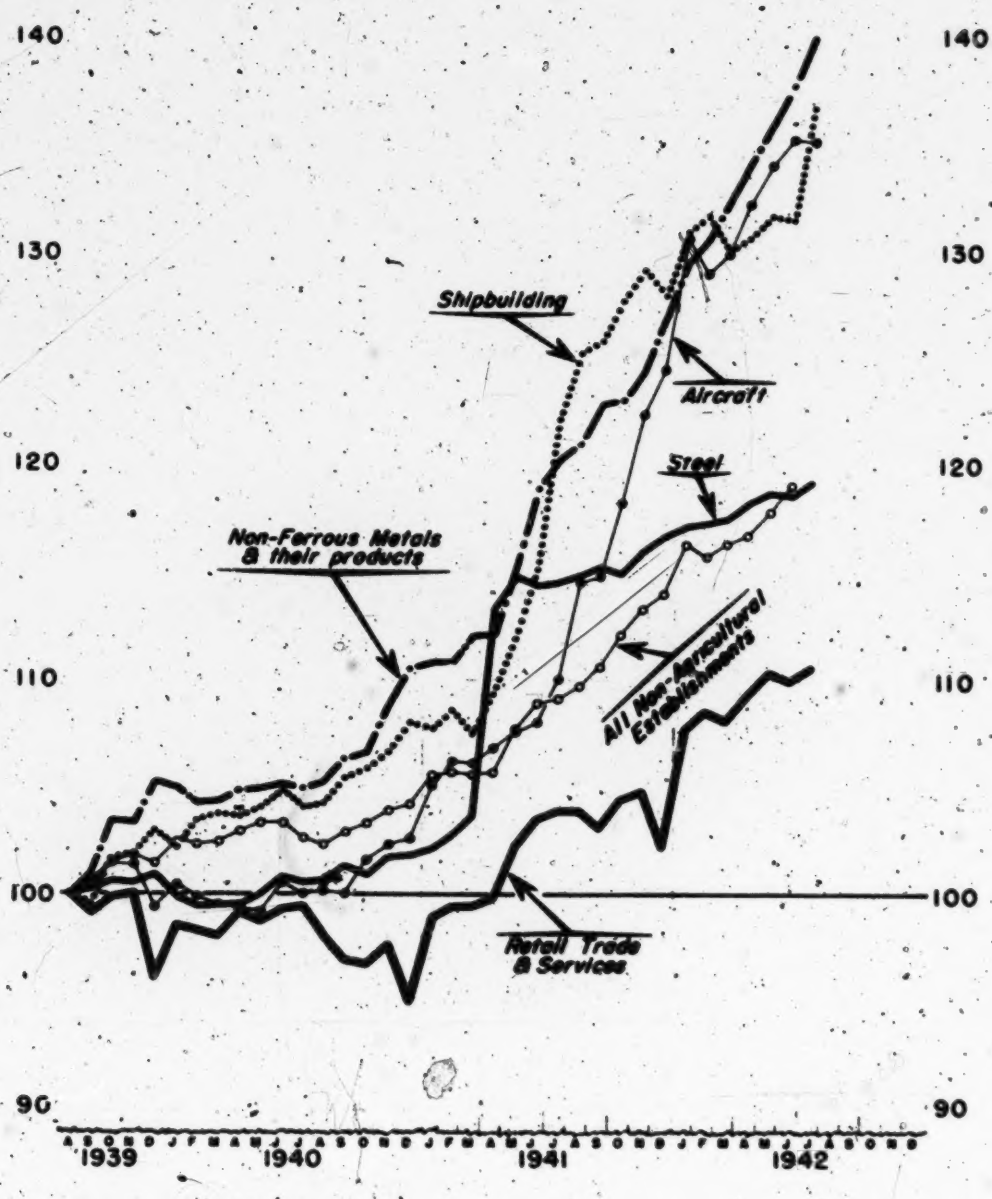
AUGUST, 1939 — JULY, 1942

MONTHLY

Sheet 7



Sheet 7



SOURCE: U. S. Department of Labor. Figures for Non-Agricultural Earnings estimated by Office of Price Administration.

OFFICE OF PRICE ADMINISTRATION
DIVISION OF RESEARCH
NO. 1994

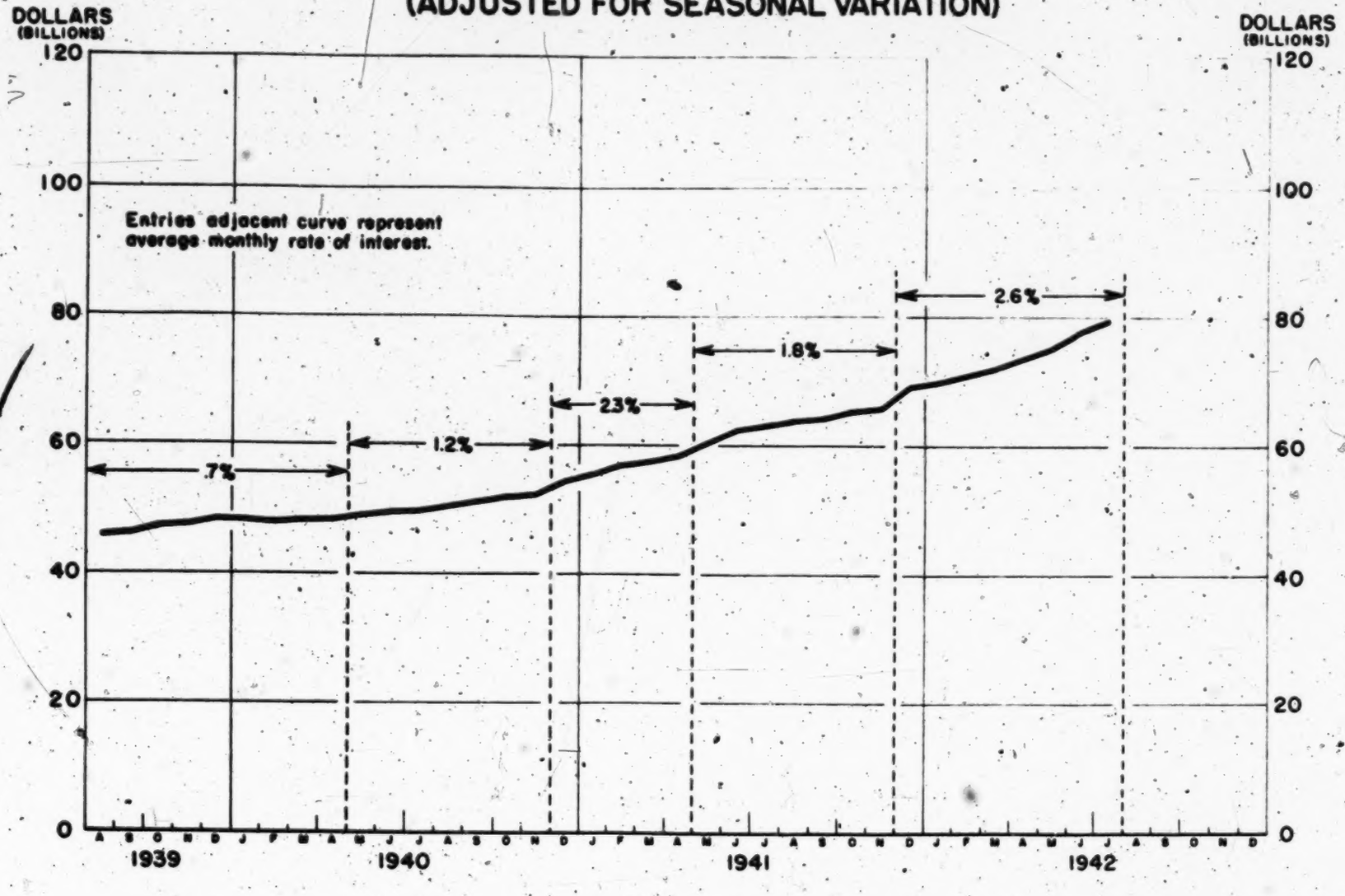
2089

1013

SALARIES AND WAGES

ANNUAL RATE OF PAYMENTS BY MONTHS

(ADJUSTED FOR SEASONAL VARIATION)



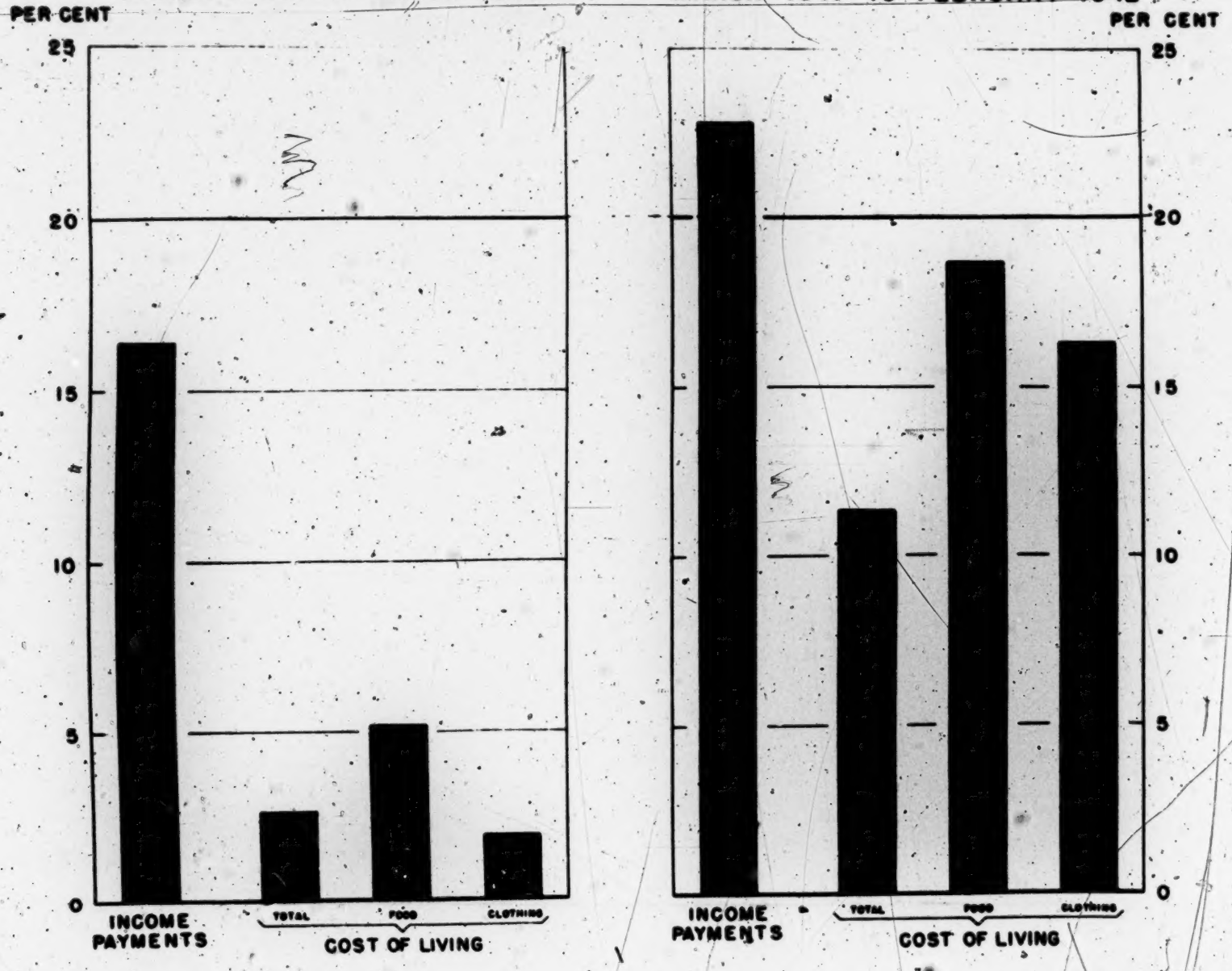
2090

SOURCE: U.S. Department of Commerce.

OFFICE OF PRICE ADMINISTRATION
DIVISION OF RESEARCH
NO. 1896

INCREASES IN INCOME PAYMENTS AND COST OF LIVING

FOR SELECTED PERIODS



SOURCES: *Income Payments*, Bureau of Foreign and Domestic Commerce
Cost of Living, Bureau of Labor Statistics

OFFICE OF FOOD ADMINISTRATION
DIVISION OF RESEARCH
NO. 600
2091-2095

[fol. 2096]

EXHIBIT No. 27

I. C. C. Docket No. 28963

Statement Showing Total Railway Operating Revenues Earned in Alabama by Petitioners in I. C. C. Docket for Years 1939 up to and Including 1942

	1939			1940			1941		
	A	B	C	A	B	C	A	B	C
Alabama Great Southern	†	†	$6,482,433	†	†	$6,934,758	†	†	$9,394,274
Atlanta, Birmingham & Coast	$88,445	$693,225	781,760	$101,857	$736,677	838,534	$323,193	$1,209,620	1,532,813
Atlantic Coast Line	243,052	1,430,468	1,673,520	231,204	1,605,695	1,836,899	436,358	2,266,792	2,703,150
Central of Georgia	569,337	2,963,920	3,533,257	577,139	3,291,656	3,868,795	882,080	4,469,100	5,351,180
Gulf, Mobile and Ohio	†	†	2,254,427	†	†	[1] 1,694,628	†	†	4,847,808
Mobile and Ohio	†	†	236,811	†	†	[2] 1,238,632			
Gulf, Mobile and Northern	†	†	1,763,801	†	†	[3] 152,623			
Illinois Central	64,483	1,699,318	17,072,449	70,608	1,850,187	1,920,795	78,949	2,155,143	2,234,092
Louisville & Nashville	4,955,472	12,116,977	990,852	5,560,825	13,193,677	18,754,502	6,915,617	17,859,785	24,775,402
Nashville, Chattanooga & St. Louis	79,334	917,518	1,808,648	73,090	986,926	1,060,016	151,898	1,183,222	1,335,120
Seaboard Air Line	127,353	1,681,295	8,785,078	117,503	1,902,690	2,020,193	137,160	2,630,355	2,767,515
Southern Railway	†	†	3,060,409	†	†	10,756,788	†	†	16,221,653
St. Louis-San Francisco	†	†	[5] 1,747,958	†	†	3,285,298	†	†	4,151,162
Western Railway of Alabama						[5] 1,845,005			[5] 2,466,901
			$50,197,403			$56,207,466			$77,781,070

EXPLANATION OF REFERENCES:

A Total actual Alabama intrastate revenue.
B Total of interstate revenue assigned to Alabama.
C Total railway operating revenue earned within Alabama.
† Not shown.
[1] For the five months ended December 31, 1940.
[2] For the seven months ended July 31, 1940.
[3] For the eight months ended August 31, 1940.
[4] Increase of G. M. & O. for 1942 over revenues of M. & O. and G. M. & N. for 1939.
[5] Total revenues reported to Interstate Commerce Commission—intrastate statistics the same

AUTHORITY: Annual Reports of Petitioners filed with the Alabama Public Service Commission.

EXHIBIT No. 27

I. C. C. Docket No. 28963

Statement Showing Total Railway Operating Revenues Earned in Alabama by Petitioners in I. C. C. Docket No. 28963 for Years 1939 up to and Including 1942

1939		1940			1941			1942			Increase In Revenue For 1942 Over 1939	Percentage Of Increase In Revenue For 1942 Over 1939
B	C	A	B	C	A	B	C	A	B	C		
†	$6,482,433	†	†	$6,934,758	†	†	$9,394,274	†	†	$16,667,918	$10,185,485	157.1
$693,225	781,760	$101,857	$736,677	838,534	$323,193	$1,209,620	1,532,813	$512,671	$1,622,289	2,134,960	1,353,200	173.1
1,430,468	1,673,520	231,204	1,605,695	1,836,899	436,358	2,266,792	2,703,150	985,120	4,468,799	5,453,919	3,780,399	225.9
2,963,920	3,533,257	577,139	3,291,656	3,868,795	882,080	4,469,100	5,351,180	1,122,084	6,071,182	7,193,266	3,660,009	103.6
†	†	†	†	[1] 1,694,628	†	†	4,847,808	†	†	6,800,496	[4] 4,309,258	173.0
†	2,254,427	†	†	[2] 1,238,632								
†	236,811	†	†	[3] 152,623								
1,699,318	1,763,801	70,608	1,850,187	1,920,795	78,949	2,155,143	2,234,092	85,305	2,247,159	2,332,464	568,663	32.2
12,116,977	17,072,449	5,560,825	13,193,677	18,754,502	6,915,617	17,859,785	24,775,402	8,993,298	29,726,094	38,719,392	21,646,943	126.8
917,518	996,852	73,090	986,926	1,060,016	151,898	[1],183,222	1,335,120	312,839	1,894,540	2,207,379	1,210,527	121.4
1,681,295	1,808,648	117,503	1,902,690	2,020,193	137,160	2,630,355	2,767,515	168,313	3,861,757	4,030,070	2,221,422	122.8
†	8,785,078	†	†	10,756,788	†	†	16,221,653	†	†	25,898,305	17,113,227	194.8
†	3,060,409	†	†	3,285,298	†	†	4,151,162	†	†	5,538,519	2,478,110	81.0
	[5] 1,747,958			[5] 1,845,005			[5] 2,466,901			[4] 4,374,645	2,626,687	150.3
	$50,197,403			$56,207,466			$77,781,070			$121,351,333	$71,153,930	141.7

EXPLANATION OF REFERENCES:

A Total actual Alabama intrastate revenue.
B Total of interstate revenue assigned to Alabama.
C Total railway operating revenue earned within Alabama.
† Not shown.
[1] For the five months ended December 31, 1940.
[2] For the seven months ended July 31, 1940.
[3] For the eight months ended August 31, 1940.
[4] Increase of G. M. & O. for 1942 over revenues of M. & O. and G. M. & N. for 1939.
[5] Total revenues reported to Interstate Commerce Commission—intrastate statistics the same.

AUTHORITY: Annual Reports of Petitioners filed with the Alabama Public Service Commission.

[fol. 2098]

EXHIBIT No. 29
I. C. C. Docket No. 28963—Witness Johnson

39—574

Statement Showing Total Railway Passenger Operating Revenues Earned by Petitioners in ICC Docket 28963 Within the State of Alabama on Intrastate and Interstate Traffic for Years of 1939 up to and including 1942

	1939	1940	1941	1942	Percentage of increase 1940 over 1939	Percentage of increase 1941 over 1940	Percentage of increase 1942 over 1941
Alabama Great Southern R. R.	$481,375	$548,838	$1,078,090	$2,552,609	14.0	96.4	136.8
Atlanta, Birmingham & Coast R. R.	13,489	15,571	23,705	53,279	15.4	52.2	124.8
Atlantic Coast Line R. R.	92,788	105,543	195,477	679,740	13.7	85.2	247.7
Central of Georgia Rwy.	276,902	326,897	628,850	1,227,248	18.1	92.4	95.2
Gulf, Mobile & Ohio R. R.	—	(1) 51,069	127,053	279,027	(4)19.6	(5)36.8	119.6
Mobile & Ohio R. R.	69,654	(2) 37,069	—	—	—	—	—
Gulf, Mobile & Northern R. R.	8,038	(3) 4,743	—	—	—	—	—
Illinois Central R. R.	97,836	113,845	206,754	467,869	11.6	81.6	126.3
Louisville & Nashville R. R.	1,601,867	1,767,688	2,383,448	7,719,661	10.4	34.8	223.9
Nashville, Chattanooga & St. Louis Ry.	74,237	82,421	114,400	318,815	11.0	38.8	178.7
Seaboard Air Line Rwy.	83,173	90,761	112,427	377,039	9.1	23.9	236.2
Southern Railway	613,464	648,474	1,055,554	2,903,273	5.7	62.8	175.0
St. Louis-San Francisco Rwy.	211,734	221,988	299,455	802,160	4.8	34.9	167.9
Western Railway of Ala.	281,301	294,080	392,978	1,138,710	4.5	33.6	189.8
Totals	3,905,858	4,308,987	6,618,191	18,520,330	10.3	53.6	179.8

(1) For the five months ended December 31, 1940.
(2) For the seven months ended July 31, 1940.
(3) For the eight months ended August 31, 1940.
(4) Percentage of increase in combined revenues of GM&O, M&O and GM&N for 1940 over revenues of M&O and GM&N for 1939.
(5) Percentage of increase in revenue of GM&O for 1941 over combined revenues of GM&O, M&O, and GM&N for 1940.

Authorities:
Annual reports of petitioners filed with the Alabama Public Service Commission.

1023

EXHIBIT No. 28

Witness Johnson

Statement Showing Passenger Operating Revenues and Revenues From Mail, Express and Milk Earned in Alabama by Petitioners in I. C. C. Docket 29863 for the Years 1939 up to and Including 1942

	1939	1940			1941			1942		Increases In Revenues For 1942 Over 1939 (except as shown)	Percentage Of Increase In Revenues For 1942 Over 1939 (except as shown)
	A	A	B	C	A	B	C	A	B	C	
Alabama Great Southern											
Passenger	$82,088	$399,287	$481,375	$83,692	$465,146	$548,838	$88,316	$989,774	$1,078,090	$126,794	$2,425,815	$2,552,609	$2,071,234	430.3
Mail	†	†	193,950	†	†	204,323	†	†	271,121	†	†	327,380	133,430	68.8
Express	†	†	78,781	†	†	74,744	†	†	84,046	†	†	99,952	21,171	26.9
Milk	†	†	462	†	†	650	†	†	519	†	†	1,401	989	203.3
Atlanta, Birmingham & Coast														
Passenger	3,390	10,099	13,489	11,038	4,533	15,571	17,328	6,377	23,705	41,483	11,796	53,279	39,790	295.0
Mail	None	7,780	7,780	None	7,835	7,835	None	7,864	7,864	None	7,824	7,824	44	5.7
Express	None	3,472	3,472	None	3,588	3,588	None	3,876	3,876	None	4,988	4,988	1,516	43.7
Milk	None	None	None	None	None	None	None	None	None	None	None	None	None	
Atlantic Coast Line														
Passenger	25,889	66,899	92,788	26,786	78,757	105,543	28,622	166,855	195,477	79,486	600,254	679,740	586,952	632.6
Mail	11,534	33,520	45,054	11,871	34,499	46,370	12,886	37,450	50,336	14,795	42,997	57,792	12,738	28.3
Express	7,716	63,562	71,278	7,729	62,380	70,100	7,761	66,244	74,005	9,673	88,989	98,662	27,384	38.4
Milk	None	886	886	None	867	867	442	1,125	1,567	254	273	527	Def 359	- 40.5
Central of Georgia														
Passenger	94,933	181,969	276,902	90,309	236,588	326,897	174,727	454,123	628,850	236,865	990,383	1,227,248	950,346	343.2
Mail	1,932	66,339	68,271	2,090	71,746	73,836	2,037	69,943	71,980	1,924	66,052	67,976	Def 295	- 4
Express	16,249	70,877	87,126	16,201	70,669	86,870	17,047	74,356	91,403	22,044	96,156	118,200	31,074	35.7
Milk	118	343	461	234	783	1,017	203	2,231	2,434	539	1,809	2,348	1,887	409.3
Gulf, Mobile & Ohio														
Passenger	–	–	–	†	†	1 51,069	†	†	127,053	†	†	279,027	201,335	259.1
Mail	–	–	–	†	†	1 24,275	†	†	58,092	†	†	46,492	Def 3,756	- 7.5
Express	–	–	–	†	†	1 9,810	†	†	28,383	†	†	26,919	832	31.9
Milk	–	–	–	†	†	1 1,758	†	†	3,788	†	†	4,529	1,279	39.4
Mobile & Ohio														
Passenger	42,277	27,377	69,654	†	†	2 37,069	–	–	–	27,377	69,654	†	†	1 37,069
Mail	†	†	46,530	†	†	2 26,946	–	–	–	†	46,530	†	†	1 26,946
Express	†	†	24,844	†	†	2 12,651	–	–	–	†	24,844	†	†	1 12,651
Milk	†	†	3,121	†	†	2 2,076	–	–	–	†	9,121	†	†	1 2,076
Gulf, Mobile & Northern														
Passenger			8,038			3 4,743	–	–	–	†	8,038	†	†	3 4,743
Mail	†	†	3,718	†	†	3 2,471	–	–	–	†	3,718	†	†	3 2,471
Express	†	†	1,243	†	†	3 673	–	–	–	†	1,243	†	†	3 673
Milk	†	†	129	†	†	3 120	–	–	–	†	129	†	†	3 120
Illinois Central														
Passenger	7,595	90,241	97,836	7,169	106,676	113,845	7,242	199,512	206,754	12,056	455,813	467,869	370,033	378.2
Mail	None	14,335	14,335	None	14,403	14,403	None	14,558	14,558	None	14,159	14,159	Def 176	- 1.2
Express	None	26,411	26,411	None	26,179	26,179	None	26,941	26,941	None	35,830	35,830	9,419	35.7
Milk	2	75	77	24	74	98	24	84	108	3	143	146	69	89.6
Louisville & Nashville														
Passenger	411,930	1,190,477	1,601,867	422,991	1,344,697	1,767,688	473,858	1,909,590	2,383,448	1,085,844	6,633,817	7,719,661	6,117,794	381.9
Mail	84,910	235,833	320,743	79,784	244,806	324,590	79,206	307,278	386,484	66,088	394,539	460,627	139,884	43.6
Express	105,709	308,844	414,553	99,911	315,217	415,128	86,736	350,211	436,947	100,084	617,068	717,152	302,599	73.0
Milk	2,172	2,840	5,012	2,506	1,159	3,665	2,562	1,083	3,645	1,270	6,258	7,528	2,516	50.2
Nashville, Chattanooga & St. Louis														
Passenger	1,202	73,035	74,237	997	81,424	82,421	852	113,548	114,400	683	318,132	318,815	244,578	329.5
Mail	679	41,226	41,905	593	42,973	43,568	342	45,903	46,245	105	49,882	49,987	8,072	19.3
Express	359	21,815	22,174	298	21,633	21,933	179	23,946	24,125	71	33,372	33,443	11,269	50.8
Milk	None	2,104	2,104	None	1,743	1,743	None	2,307	2,307	None	4,331	4,331	2,227	105.8
Seaboard Air Line														
Passenger	14,137	69,036	83,173	14,306	76,455	90,761	15,374	97,053	112,427	20,473	357,466	377,939	294,766	354.4
Mail	5,817	27,596	33,413	5,011	26,411	31,422	4,859	29,078	33,937	2,002	34,942	36,944	3,531	10.6
Express	3,401	50,268	53,669	2,669	50,670	53,339	2,417	53,386	55,803	2,897	69,819	72,716	19,047	35.5
Milk	2	None	2	None	None	None	None	None	None	18	None	18	16	800.0
Southern Railway														
Passenger	192,769	420,695	613,464	191,489	456,985	648,474	229,617	825,937	1,055,554	451,005	2,452,268	2,903,273	2,289,809	373.3
Mail	†	†	253,933	†	†	274,042	†	†	282,203	†	†	295,504	41,571	16.4
Express	†	†	115,307	†	†	113,575	†	†	128,714	†	†	179,078	63,771	55.3
Milk	†	†	400	†	†	487	†	†	582	†	†	484	84	21.0
St. Louis-San Francisco														
Passenger	20,474	191,260	211,734	18,124	203,864	221,988	20,885	278,570	299,455	43,474	758,686	802,160	590,426	278.9
Mail	†	†	80,648	†	†	85,016	†	†	92,226	†	†	92,679	12,031	14.9
Express	†	†	41,087	†	†	45,074	†	†	47,879	†	†	76,351	35,264	85.8
Milk	†	†	547	†	†	568	†	†	649	†	†	819	272	49.7
Seaboard Air Line of Alabama														
Passenger	–	–	1 281,301	–	–	4 294,080	–	–	4 392,978	–	–	5 1,138,710	857,409	304.8
Mail	–	–	1 70,040	–	–	4 73,576	–	–	4 79,824	–	–	5 99,401	29,361	41.9
Express	–	–	1 57,282	–	–	4 55,892	–	–	4 59,374	–	–	5 81,333	24,015	42.0
Milk	–	–	324	–	–	4 308	–	–	4 386	–	–	5 22	Def 302	- 93.2
TOTAL			$6,096,930			$6,544,573			$9,090,572			$21,643,872	15,546,942	255.0

EXPLANATION OF REFERENCES:

A Revenues earned within Alabama on intrastate traffic.
B Revenues from interstate traffic assigned to Alabama.
C Total revenues earned within Alabama.
† Not shown.
1 For the five months ended December 31, 1940.
2 For the seven months ended July 31, 1940.
3 For the eight months ended August 31, 1940.
4 Increases (except as shown) in revenues of G. M. & O. for 1942 over similar revenues of M. & O. and G. M. & N. for 1939.
5 Total revenues reported to Interstate Commerce Commission—intrastate statistics the same.

AUTHORITY: Annual Reports of Petitioners filed with the Alabama Public Service Commission.

EXHIBIT No. 28

Witness Johnson

ment Showing Passenger Operating Revenues and Revenues From Mail, Express and Milk Earned in Alabama by Petitioners in I. C. C. Docket 29863 for the Years 1939 up to and Including 1942

EXPLANATION OF REFERENCES:

A Revenues earned within Alabama on intrastate traffic.
B Revenues from interstate traffic assigned to Alabama.
C Total revenues earned within Alabama.
† Not shown.
1 For the five months ended December 31, 1940.
2 For the seven months ended July 31, 1940.
3 For the eight months ended August 31, 1940.
4 Increases (except as shown) in revenues of G. M. & O. for 1942 over similar revenues of M. & O. and G. M. & N. for 1939.
5 Total revenues reported to Interstate Commerce Commission—intrastate statistics the same.

AUTHORITY: Annual Reports of Petitioners filed with the Alabama Public Service Commission.

[fol. 2099]

EXHIBIT No. 30

I. C. C. Docket No. 28963—Witness Johnson

Statement Showing Operating Freight Revenues Earned by Petitioners in I. C. C. Docket 28963 within the state of Alabama on intrastate and interstate traffic for the years of 1939 up to and including 1942

	1939	1940	1941	1942	Percentage of increase 1940 over 1939	Percentage of increase 1941 over 1940	Percentage of increase 1942 over 1941
Alabama Great Southern R. R.	$5,620,487	$5,998,517	$7,802,710	$13,415,035	6.7	30.0	71.9
Atlanta, Birmingham & Coast R. R.	742,391	798,086	1,449,390	2,027,181	7.5	80.5	40.7
Atlantic Coast Line R. R.	1,433,540	1,581,809	2,337,445	4,535,069	10.3	47.8	94.0
Central of Georgia Rwy.	3,040,046	3,317,183	4,449,522	5,508,409	9.1	34.1	23.7
Gulf, Mobile & Ohio R. R.	—	(1) 1,570,952	4,535,167	6,300,993	(4)26.8	(5)63.4	38.9
Mobile & Ohio R. R.	1,970,402	(2) 1,062,781	—	—			
Gulf, Mobile & Northern R. R.	219,080	(3) 141,461	—	—			
Illinois Central R. R.	1,594,289	1,733,715	1,935,467	1,715,819	8.7	11.6	−11.3
Louisville & Nashville R. R.	14,348,910	15,803,718	21,020,212	28,813,907	10.1	33.0	37.1
Nashville, Chattanooga & S. Louis Ry.	840,725	895,339	1,128,093	1,764,855	6.5	26.0	56.4
Seaboard Air Line Rwy.	1,586,491	1,785,770	2,497,588	3,451,317	12.6	39.9	38.3
Southern Railway	7,554,320	9,450,161	14,395,021	21,970,406	25.1	52.3	52.6
St. Louis-San Francisco Rwy.	2,687,522	2,887,700	3,664,328	4,475,709	7.4	26.9	22.1
Western Railway of Alabama	1,239,625	1,341,480	1,826,403	2,863,392	8.2	36.1	56.8
Totals	42,877,828	48,386,672	67,032,346	96,837,092	12.8	38.5	44.5

EXPLANATION OF REFERENCES

(1) For the five months ended December 31, 1940
(2) For the seven months ended July 31, 1940.
(3) For the eight months ended August 31, 1940.
(4) Percentage of increase in combined revenues of GM&O, M&O and GM&N for 1940 over revenues of M&O and GM&N for 1939.
(5) Percentage of increase in revenue of GM&O for 1941 over combined revenues of GM&O, M&O and GM&N for 1940.

Authorities:
Annual reports of petitioners filed with Alabama Public Service Commission.

[fol. 2100]

EXHIBIT No. 31

I. C. C. Docket No. 28963—Witness Johnson

Statement Showing One-Way Present Rail Coach Fares and Bus Fares and Proposed Rail Coach Fares Between Montgomery and Birmingham, Alabama, to Various Points in Alabama. (Does not include transportation tax)

Between	Birmingham, Alabama								
	Rail Coach Fares			Bus Fares			Proposed Rail Coach Fares		Increase in Proposed Rail Coach Fares over Present Bus Fares
and	Miles		Fare	Miles		Fare		Fare	
Demopolis	155	(1)	$2.60	139	(12)	$2.05	(2)	$3.41	$1.36
York	128	(5)	2.15	127	(13)	1.95	(6)	2.82	.87
Tuscaloosa	58	(5)	.99	58	(13)	1.00	(6)	1.28	.28
Florence	135	(4)	2.26	131	(19)	2.05	(3)	2.97	.92
Athens	98	(7)	1.65	96	(16)	1.55	(8)	2.16	.61
Cullman	53	(7)	.88	50	(16)	.90	(8)	1.17	.27
Huntsville	110	(4)	1.87	105	(19)	1.90	(3)	2.42	.52
Attalla	57	(5)	.99	52	(14)	.95	(6)	1.25	.30
Fort Payne	93	(5)	1.55	89	(14)	1.50	(6)	2.05	.55
Anniston	65	(10)	1.10	64	(15)	1.05	(9)	1.43	.38
Clanton	57	(7)	.99	61	(17)	1.00	(8)	1.25	.25
Alexander City	80	(11)	1.30	82	(18)	1.20	(11)	1.76	.56
Between	Montgomery, Alabama								
and									
Dothan	120	(8)	2.00	113	(1)	1.90	(13)	2.64	.74
Birmingham	98	(6)	1.65	105	(1)	1.60	(15)	2.16	.56
Opelika	67	(9)	1.10	65	(2)	1.05	(10)	1.47	.42
Selma	50	(9)	.83	51	(3)	1.00	(10)	1.10	.10
Gadsden	160	(11)	2.75	146	(4)	2.45	(12)	3.52	1.07
Andalusia	93	(7)	1.55	84	(3)	1.65	(14)	2.05	.40
Decatur	183	(6)	3.05	188	(5)	2.75	(15)	4.03	1.28
Mobile	180	(7)	2.95	208	(2)	2.75	(14)	3.96	1.21

[fol. 2101]

Birmingham, Alabama

Authorities:

(1) Southern Railway Passenger Tariff No. 7, ICC No. 8398.
(2) Southern Railway Passenger Tariff No. 8, ICC No. 8589.
(3) Agent Duggan's Tariff C-A No. 5, ICC No. H-4415.
(4) Agent Duggan's Tariff C-A No. 4, ICC No. H-4064.
(5) Southern Railway Local Passenger Tariff No. 9, AGS RR ICC No. 877.
(6) Southern Railway Local Passenger Tariff No. 10, AGS RR ICC No. 914.
(7) L&N RR GPD No. 10351, ICC No. 8022.
(8) L&N RR GPD No. 10799, ICC No. 8317.
(9) Southern Railway Local Passenger Tariff No. R-6, ICC No. 8575.
(10) Southern Railway Local Passenger Tariff No. R-5, ICC No. 8296.
(11) Central of Georgia Passenger Tariff A-3945, ICC No. 2216.
(12) Teche Greyhound Tariff No. 15-E and Southeastern Greyhound Tariff No. 47.
(13) Teche Greyhound Tariff No. 50-H.
(14) Southeastern Greyhound Tariff No. 39-B.
(15) Southeastern Greyhound Tariff No. 2-F.
(16) Southeastern Greyhound Tariff No. 29-E.
(17) Southeastern Greyhound Tariff No. 26-D.
(18) Crescent Stages Tariff No. 2-C.
(19) National Bus Traffic Association Passenger Tariff No. 350.

Montgomery, Alabama

Authorities:

(1) Southeastern Greyhound Tariff No. 26-D.
(2) Teche Greyhound Tariff No. 70-E.
(3) Capital Motor Lines Tariff No. 15.
(4) Crescent Stages Tariff No. 2-C.
(5) Agent DeZonia's Southeastern Passenger Tariff No. 1-A.
(6) L&N GPD No. 10351, ICC No. 8022 and L&N GPD No. 10790.
(7) L&N GPD No. 10352, ICC No. 8023 and L&N GPD No. 10790.
(8) ACL Passenger Tariff No. H-5, ICC No. A-3391.
(9) W. Rwy. of Alabama Passenger Tariff No. 13, ICC No. 409.
(10) W. Rwy. of Alabama Passenger Tariff No. 14, ICC No. 426.
(11) Agent Duggan's Tariff C-A No. 4, ICC H-4064.
(12) Agent Duggan's Tariff C-A No. 5, ICC H-4415.
(13) ACL Tariff No. H-6, ICC A-3487.
(14) L&N Tariff GPD No. 10791, ICC 8309.
(15) L&N Tariff GPD No. 10799, ICC 8317.

[fol. 2102]

EXHIBIT No. 32

I. C. C. Docket No. 28963—Witness Johnson

Statement Showing Scheduled and Restricted Stops of Various First Class Passenger Trains for that Portion Operated Through Alabama

Louisville & Nashville R. R.		Western Railway of Alabama Louisville & Nashville RR		Southern Railway System		Louisville & Nashville R.R. Atlantic Coast Line R. R.	
Pan-American Nos. 98–99	Azalean 1–4	Crescent 37–38	Piedmont 33–34	Southerner 47–48	Tennessean 45–46	Southwind 15–12 16–11	
(1) Athens	Athens	Opelika	Opelika	Anniston	(11) Stevenson	Birmingham	
Decatur	Decatur	(3) Auburn	(4) Auburn	(10) Pell City	(11) Scottsboro	Montgomery	
Birmingham	(13) Hartselle	(3) Chehaw	(5) Chehaw	Birmingham	Huntsville	(12) Ozark	
Montgomery	Cullman	Montgomery	Montgomery	Tuscaloosa	Decatur	Dothan	
Greenville	Birmingham	(6) Greenville	Greenville		Sheffield		
(2) Flomaton	(14) Helena	(7) Georgiana	(8) Georgiana		Tuscumbia		
Mobile	Calera	(7) Evergreen	(9) Evergreen				
	Clanton	(7) Brewton	(9) Brewton				
	Montgomery	Flomaton	Flomaton				
	Greenville	(7) Atmore	Atmore				
	Georgiana	(7) Bay Minette	Bay Minette				
	Evergreen	Mobile	Mobile				
	Brewton						
	Flomaton						
	(15) Canoe						
	Atmore						
	(15) Perdido						
	Bay Minette						
	Mobile						
	(15) Theodore						
	(15) St. Elmo						
	(14) Grand Bay						

AUTHORITY: The Official Guide of the Railways published by National Railway Publication Company.

1027

[fol. 2103]

EXPLANATION OF REFERENCES

(1) Stops for revenue passengers to or from Nashville and beyond or to or from Birmingham and beyond.
(2) Stops for revenue passengers to or from Birmingham and beyond.
(3) Stops for revenue passengers to or from Montgomery and beyond and to or from Atlanta and beyond.
(4) Regular stop westbound. Stops eastbound to let off passengers from Montgomery and beyond and to pick up passengers for Atlanta and beyond.
(5) Regular stop westbound. Stops eastbound to take pay passengers for Atlanta and beyond.
(6) Regular stop eastbound. Stops westbound to leave pay passengers from scheduled stops on West Point Route and from Atlanta and beyond.
(7) Stops to take or leave pay passengers to or from scheduled stops on West Point Route and to or from Atlanta and beyond.
(8) Stops to leave revenue passengers from scheduled stops on West Point Route and from Atlanta and beyond.
(9) Stops to leave revenue passengers from scheduled stops on West Point Route and from Atlanta and beyond and to leave revenue passengers from Mobile, Pensacola and beyond and take for Atlanta and beyond.
(10) Stops westbound on signal to receive or discharge revenue passengers.
(11) Stops to pick up or discharge passengers to or from Decatur and points west and to or from Chattanooga and points east.
(12) Stops to let off or take passengers from or to Montgomery and beyond or from or to Jacksonville or beyond.
(13) Stops to leave or take revenue passengers from or to Birmingham or beyond or from or to Nashville and beyond.
(14) Stops southbound on signal.
(15) Stops southbound to let off pay passengers from Montgomery or Pensacola and beyond.

[fol. 2104]

EXHIBIT No. 33
I. C. C. Docket 28963—Witness Johnson
BEFORE THE
INTERSTATE COMMERCE COMMISSION
ALABAMA INTRASTATE FARES
DOCKET NO. 28963

STATEMENT SHOWING ALABAMA OPERATING REVENUES AND EXPENSES RELATED TO PASSENGER AND ALLIED SERVICES AS REPORTED IN ANNUAL REPORTS OF PETITIONERS FOR YEARS 1941 AND 1942. INCLUDES OPERATING REVENUES AND EXPENSES ON ALABAMA INTRASTATE PASSENGER TRAFFIC ACTUAL AND ASSIGNED.

AUTHORITIES: Annual reports of petitioners on file with Alabama Public Service Commission.

[fol. 2105]

Alabama Great Southern Railroad

	1941	1942
	Revenues	
Passengers	$1,078,090	$2,552,609
Baggage	2,635	4,202
Mail	271,121	327,380
Express	84,046	99,952
Other Passenger train	6,756	16,369
Milk	519	1,401
Dining & Buffet	62,550	154,286
Parcel	9	14
Storage-Baggage	36	34
Total	$1,505,762	$3,156,247
	Expenses	
Expenses related solely to Passenger and Allied Services	$983,824	$1,458,852
Expenses apportioned to passenger and Allied Service	239,079	236,908
Total	$1,222,903	$1,695,760
Operating Revenue	$1,505,762	$3,156,247
Operating Expenses	$1,222,903	$1,695,760
Net Operating Revenues	$282,859	$1,460,487

[fol. 2106]

Atlanta–Birmingham and Coast Railroad

	1941	1942
Revenues		
Passenger	$23,705	$53,279
Baggage	50	75
Mail	7,864	7,824
Express	3,876	4,988
Other Passenger	.....	.....
Train	.....	.....
Milk	.....	.....
Dining & Buffet	.....	.....
Parcel	.....	.....
Storage	.....	.....
Baggage	.....	.....
Total Revenues	$35,495	$66,166
Expenses		
Expenses related solely to passenger and allied service	$154,321	$195,165
Expenses apportioned to passnger and allied service	$56,608	$78,315
Total Passenger Expense	$210,929	$273,480
Operating Revenues	$35,495	$66,166
Operating Expenses	210,929	273,480
Net Operating Revenue	$175,434 def.	$207,314 def.

[fol. 2107]

Atlantic Coast Line Railroad

	1941	1942
Revenues		
Passenger	$195,477	$679,740
Baggage	1,577	1,703
Mail	50,336	57,792
Express	74,005	98,662
Other passenger train	9,679	11,490
Milk	1,567	527
Dining and Buffet	10,856	19,303
Parcel	9	88
Storage	.....	.....
Baggage	42	367
Total	$343,548	$869,582
Expenses		
Expenses related solely to passenger and allied service	$241,483	$421,965
Express apportioned to passenger and allied service	90,414	132,603
Total	$331,897	$554,568
Operating Revenues	$343,548	$869,582
Operating Expenses	331,897	554,568
Net Operating Revenues	$11,651	$15,014

[fol. 2108]

Central of Georgia Railway

	1941	1942
	Revenues	
Passenger	$628,850	$1,227,248
Baggage	1,409	1,426
Mail	71,980	67,976
Express	91,403	118,200
Other Passenger Train	299	234
Milk	2,404	2,348
Dining & Buffet	35,559	93,600
Parcel	9	26
Storage	.....	.....
Baggage	9	56
Total	$831,922	$1,511,114
	Expenses	
Expenses related solely to passenger and allied service	$474,642	$679,957
Expenses apportioned to passenger and allied service	304,603	382,156
Total	$779,245	$1,062,113
Operating Revenue	$831,922	$1,511,114
Operating Expenses	779,245	1,062,113
Net Operating Revenue	$52,677	$449,001

[fol. 2109]

Gulf, Mobile and Ohio Railroad

	1941	1942
	Revenues	
Passenger	$127,053	$279,027
Baggage	128	137
Mail	58,092	43,492
Express	28,383	26,919
Other Passenger train	440	278
Milk	3,788	4,527
Dining & Buffet	5,500	13,255
Parcel	1	.....
Storage & Baggage	7	7
Sleeping Car	2,356	3,131
Total	$225,748	$370,773
	Expenses	
Expenses related solely to Passenger and Allied Service	$314,047	$340,943
Expenses apportioned to Passenger and Allied Service	$104,207	$105,451
Total	$418,254	$446,394
Operating Revenue	225,748	370,773
Operating Expenses	418,254	446,394
Net Operating Revenues	$192,506-def.	$75,621-def.

[fol. 2110]

Illinois Central

	1941	1942
	Revenues	
Passenger	$206,754	$467,869
Baggage	444	640
Mail	14,558	14,159
Express	26,941	35,830
Other Passenger Train	4,360	2,743
Milk	108	146
Dining & Buffet	31,824	82,804
Parcel	.....	.....
Storage & Baggage	.....	.....
Total	$284,989	$604,191
	Expenses	
Expenses related solely to Passenger and Allied Service	$273,214	$374,655
Expenses Apportioned to Passenger and Allied Service	83,661	122,568
Total	356,875	497,223
Operating Revenue	$284,989	$604,191
Operating Expenses	356,875	497,223
Net Operating Revenues	71,886-def.	$106,968

[fol. 2111]

Louisville and Nashville Railroad Co.

	1941	1942
	Revenues	
Passenger	$2,383,448	$7,719,661
Baggage	9,232	11,424
Mail	386,484	460,627
Express	436,947	717,152
Other passenger train	9,340	18,064
Milk	3,645	7,528
Dining and Buffet	153,068	541,738
Parcel	.....	.....
Storage	.....	.....
Baggage	1,081	1,590
Total	$3,383,245	$9,477,784
	Expenses	
Expenses related solely to passenger and allied service	$2,597,851	$3,955,669
Expenses apportioned to passenger and allied service	918,413	1,234,999
Total	$3,516,264	$5,190,668
Operating Revenue	$3,383,245	$9,477,784
Operating Expenses	3,516,264	5,190,668
Net Operating Revenues	$133,019 def.	$4,287,116

[fol. 2112]

Nashville, Chattanooga & St. Louis Rwy.

	1941	1942
	Revenues	
Passenger	$114,400	$318,815
Baggage	579	516
Mail	46,245	49,987
Express	24,125	33,443
Other Passenger Train	784	759
Milk	2,307	4,331
Dining & Buffet	5,384	15,412
Parcel Room	.....	.....
Storage	.....	.....
Baggage	.....	.....
Parlor & Chair Car	240	348
Total	$194,064	$423,611
	Expenses	
Expenses related solely to Passenger and allied service	$116,760	$152,273
Expenses apportioned to Passenger and Allied Service	29,929	40,968
Total	$146,689	$193,241
Operating Revenues	$194,064	$423,611
Operating Expenses	146,689	193,241
Net Operating Revenues	$47,375	$230,370

[fol. 2113]

Seaboard Air Line Railway

	1941	1942
	Revenues	
Passenger	$112,427	$377,939
Baggage	1,777	2,035
Mail	33,937	36,944
Express	55,803	72,716
Other passenger train	12,600	14,871
Milk	.....	18
Dining and buffet	30,707	51,370
Parcel	.....	.....
Storage-Baggage	5	8
Totals	$247,256	$555,901
Grand Total Railway Operating Revenues	$2,767,515	$4,030,070
Grand Total Railway Operating Expenses	2,090,379	2,449,698
Net Operating Revenue	$677,136	$1,580,372

NOTE: Expenses chargeable to freight and passenger on intrastate traffic not shown separately in reports filed by this carrier.

[fol. 2114]

Southern Railway

	Revenues	
	1941	1942
Passenger	$1,055,554	$2,903,273
Baggage	2,999	3,920
Mail	282,203	295,504
Express	128,714	179,078
Other Passenger	.....	.....
Train	22,857	34,067
Milk	582	484
Dining & Buffet	69,867	192,890
Parcel Room	130	431
Storage	.....	.....
Baggage	17	39
Total Revenues	$1,562,923	$3,609,686
	Expenses	
Expenses related solely to passenger and allied service	$1,190,018	$1,636,896
Expenses apportioned to passenger and allied service	$420,143	$556,091
Total Passenger Expenses	$1,610,161	$2,192,987
Operating Revenues	$1,562,923	$3,609,686
Operating Expenses	$1,610,161	$2,192,987
Net Operating Revenues	$47,238 def.	$1,416,699

[fol. 2115]

St. Louis-San Francisco Railway

	Revenues	
	1941	1942
Passenger	$299,455	$802,160
Baggage	776	984
Mail	92,226	92,679
Express	47,879	76,351
Other Passenger	.....	.....
Train	1,806	7,294
Milk	649	819
Dining and Buffet	17,581	50,890
Parcel Room	.....	1
Storage	.....	.....
Baggage	.....	.....
Sleeping car	2,682	2,687
Parlor & Chair Car	.....	71
Total Revenue	$463,054	$1,033,936
	Expenses	
Expense related solely to passenger and allied service	$387,140	$473,114
Expenses apportioned to passenger and allied service	$301,144	319,301
Total Passenger Expense	$688,284	$792,415
Operating Revenue	463,054	1,033,936
Operating Expenses	688,284	792,415
Net Operating Revenue	$225,230 def.	$241,521

[fol. 2116]

Western Railway of Alabama

Revenues

	1941	1942
Passenger	$377,680	$1,094,582
Baggage	1,354	1,726
Mail	73,837	93,615
Express	52,825	75,583
Other Passenger	.....	.....
Train	12,960	18,691
Milk	386	22
Dining and Buffet	32,912	67,126
Parcel Room	.....	.....
Storage	.....	.....
Baggage	181	427
	$552,135	$1,351,772

Expenses

Expense related solely to passenger and allied service	$391,569	$498,279
Expenses apportioned to passengers and allied service	$141,899	146,880
Total Passenger Expense	$533,468	$645,159
Operating Revenues	$552,135	$1,351,772
Operating Expenses	533,468	645,159
Net Operating Revenue	$18,667	$706,613

(Here follow 3 Pasters, side folios 2117, 2118, 2119, 2020)

[fol. 2117]

EXHIBIT No. 34
I. C. C. Docket No. 28963—Witness Mohr

Statement Showing Revenues, Expenses and Net Railway Operating Income
Three Months Ended March 1943 and 1942
Southern District

Region and Road	Average Miles of Road Operated 1943	Freight Revenue (Accts. 101 & 121)		Passenger Revenue (Accts. 102 & 122)		Total Operating Revenues		Total Operating Expenses		Net Railway Operating Income	
		1943	1942	1943	1942	1943	1942	1943	1942	1943	1942
Alabama Great Southern	315	$4,159,025	$2,941,186	$1,020,816	$437,964	$5,445,005	$3,581,620	$2,853,869	$2,127,926	$673,373	$507,251
Atlanta, Birmingham & Coast	639	1,636,516	1,018,447	178,437	108,087	1,894,125	1,191,119	1,223,279	988,824	247,020	20,862
Atlantic Coast Line	4,987	28,568,189	16,684,693	9,358,031	4,807,742	40,138,809	23,135,835	18,653,178	14,931,891	5,979,620	5,130,103
Central of Georgia	1,816	6,598,740	4,570,096	1,617,717	796,328	8,960,637	5,912,180	5,503,511	4,499,939	2,290,406	938,536
Gulf, Mobile & Ohio	1,972	8,922,487	5,874,593	558,824	177,790	9,747,798	6,297,845	5,795,687	4,522,496	1,362,271	796,488
Illinois Central (Incl. Y & MV)	6,355	49,804,706	37,594,427	7,944,268	4,244,295	61,023,733	44,277,886	38,847,038	29,747,065	10,940,046	7,960,999
Louisville and Nashville	4,745	37,530,716	28,204,194	10,213,669	3,473,417	50,478,477	33,495,813	28,169,512	22,838,219	6,421,462	5,479,394
Nashville, Chattanooga and St. Louis	1,090	7,208,887	4,394,409	1,825,330	638,662	9,730,935	5,518,668	5,834,396	4,361,109	2,074,003	639,044
Seaboard Air Line	4,184	23,989,858	15,125,976	9,828,037	5,113,512	35,955,388	21,633,212	19,211,442	15,211,659	11,221,608	4,395,301
Southern Railway	6,514	43,190,416	32,636,638	12,395,531	4,936,128	59,080,695	40,002,756	31,037,357	26,234,156	8,358,762	7,266,019
Western Railway of Alabama	133	842,854	573,929	343,805	160,787	1,294,915	802,258	733,437	539,784	163,600	112,867
St. Louis-San Francisco Sys.[1]	4,830	19,000,121	13,803,383	5,123,760	1,964,522	25,838,684	17,048,305	16,651,590	12,643,357	5,800,943	3,605,691

[1] Data shown for the St. Louis-San Francisco System includes the St. Louis-San Francisco & Texas.

AUTHORITY: Publication of The Association of American Railroads,
Bureau of Railway Economics,
Washington, D. C.

[fol. 2118]

EXHIBIT No. 35

I. C. C. Docket No. 0000000—Witness Mohn

Statement Showing
Revenues, Expenses, and Net Railway Operating Income
Southern Region
Twelve months ended December, 1942 and 1941

Region and Road	Average Miles of Road Operated 1942	Freight Revenue (Accts. 101 & 121)		Passenger Revenue (Accts. 102 & 122)		Total Operating Revenues		Total Operating Expenses		Net Railway Operating Income	
		1942	1941	1942	1941	1942	1941	1942	1941	1942	1941
Southern Region:											
Alabama Great Southern	315	$15,801,906	$9,143,797	$3,014,694	$1,269,901	$19,749,292	$11,102,951	$9,904,714	$6,801,831	$2,409,124	$2,331,666
Atlanta & West Point	93	2,505,099	1,796,664	1,102,865	385,918	4,000,671	2,401,044	2,320,956	1,820,350	612,244	202,137
Atlanta, Birmingham and Coast	639	5,310,066	4,071,175	430,064	326,212	6,035,089	4,662,498	4,737,770	3,656,206	305,611	213,791
Atlantic Coast Line	5,004	82,310,279	49,826,243	25,822,233	11,817,851	115,108,820	67,404,252	62,947,631	46,859,449	21,195,567	11,080,953
Central of Georgia	1,816	22,660,298	18,338,319	4,695,808	2,091,309	29,503,084	22,336,739	18,969,814	16,027,243	7,711,979	4,385,060
Gulf, Mobile & Ohio	1,969	30,736,553	22,122,767	1,361,108	619,770	33,173,151	23,647,846	20,674,982	16,126,523	5,648,668	3,661,460
Illinois Central (Incl. Y&MV)	6,445	178,969,303	120,471,429	22,531,696	12,542,496	213,026,422	142,438,326	139,481,368	101,729,066	40,957,856	25,903,251
Louisville & Nashville	4,777	136,689,523	104,063,091	23,288,244	8,976,429	168,824,550	119,569,572	99,028,658	78,076,815	32,732,085	25,548,223
Nashville, Chattanooga & St. Louis	1,107	24,045,988	16,257,795	4,654,317	1,706,194	30,928,868	19,668,767	19,662,787	14,128,156	5,702,913	3,309,419
Seaboard Air Line	4,257	76,350,934	48,476,540	27,169,323	11,026,177	110,242,375	64,608,903	67,010,358	48,800,722	30,383,971	10,106,964
Southern Ry.	6,519	156,635,034	116,520,375	36,265,338	14,232,779	204,605,581	139,926,434	113,746,737	88,547,313	46,265,818	32,789,981
Western Ry. of Alabama	133	2,863,392	1,826,403	1,138,710	392,978	4,374,645	2,466,901	2,420,534	1,849,715	805,357	299,760
St. Louis-San Francisco System c	4,879	69,526,336	51,540,295	13,310,236	4,921,702	89,042,843	61,194,191	56,514,188	44,785,078	26,797,992	12,125,397

NOTE A: Data shown for the St. Louis-San Francisco System includes the St. Louis, San Francisco & Texas.

Authority: Publications of the
Association of American Railroads
Bureau of Railway Economics
Washington, D. C.

1036C

[fol. 2119]

EXHIBIT No. 36
Witness: Mohr—I.C.C. Docket No. 28963

Statement Showing Railway Revenues and Expenses

Railways of Class I in the United States
(Excluding Switching and Terminal Companies)

Account	For the month of March				For the 3 months ended March 31			
	1943	1942	Increase 1943 over 1942 Amount	Per cent	1943	1942	Increase 1943 over 1942 Amount	Per cent
Total operating revenues	$756,250,563	$540,300,226	$215,950,337	40.0	$2,091,164,289	$1,483,477,396	$607,686,893	41.0
Freight	585,251,709	445,668,658	139,583,051	31.3	1,612,804,891	1,215,832,717	396,972,174	32.7
Passenger	121,447,500	59,105,912	62,341,588	105.5	340,397,087	169,549,055	170,848,032	100.8
Mail	10,033,729	9,009,345	1,024,384	11.4	28,835,252	26,095,740	2,739,512	10.5
Express	11,910,786	7,940,795	3,969,991	50.0	29,507,879	17,443,173	12,064,706	69.2
All other	27,606,839	18,575,516	9,031,323	48.6	79,619,180	54,556,711	25,062,469	45.9
Total operating expenses	449,440,079	360,152,483	89,287,596	24.8	1,282,103,531	1,036,586,797	245,516,734	23.7
Maint. of way & struct.*	80,422,735	54,832,217	25,590,518	46.7	225,500,631	151,875,348	73,625,283	48.5
Maint. of equipment*	115,120,688	98,059,345	17,061,343	17.4	327,969,691	282,460,249	45,509,442	16.1
Traffic	10,130,698	9,795,398	335,300	3.4	30,294,580	28,861,027	1,433,553	5.0
Transportation	220,546,176	179,226,113	41,320,063	23.1	630,802,560	520,194,522	110,608,038	21.3
General	14,863,297	13,145,370	1,717,927	13.1	43,246,651	38,272,693	4,973,958	13.0
All other	8,356,485	5,094,040	3,262,445	64.0	24,289,418	14,922,958	9,366,460	62.8
Net operating revenue	306,810,484	180,147,743	126,662,741	70.3	809,060,758	446,890,599	362,170,159	81.0
Taxes	161,808,023	76,334,529	85,473,494	112.0	422,222,184	188,573,161	233,649,023	123.9
Payroll taxes	16,477,928	13,554,953	2,922,975	21.6	47,453,523	39,305,782	8,147,741	20.7
Federal income taxes	120,677,241	41,622,753	79,054,488	189.9	303,795,980	87,877,992	215,917,988	245.7
All other taxes	24,652,854	21,156,823	3,496,031	16.5	70,972,681	61,389,387	9,583,294	15.6
Operating income	145,002,461	103,813,214	41,189,247	39.7	386,838,574	258,317,438	128,521,136	49.8
Equipment rents	Dr 11,926,843	Dr 10,162,411	d 1,764,432	d 17.4	Dr 35,656,824	Dr 27,635,567	d 8,021,257	d 29.0
Joint facility rents	Dr 3,428,580	Dr 3,079,110	d 349,470	d 11.3	Dr 10,121,983	Dr 8,999,888	d 1,122,095	d 12.5
Net railway operating income	129,647,038	90,571,693	39,075,345	43.1	341,059,767	221,681,983	119,377,784	53.9
Operating ratio—per cent	59.43	66.66			61.31	69.88		
Average mileage represented	229,525	231,555	d 2,030	d 0.9	229,595	231,596	d 2,001	d 0.9
[fol. 2120]								
* Amount of depreciation included in maintenance of way and structures and equipment expenses	26,535,985	19,695,109			79,496,940	56,285,336		

d Decrease.

Authority
Publication of the Association of American Railroads
Bureau of Railway Economics
Washington, D. C.

[fol. 2121]

Rate of Return on Property Investment
12 months ended March 31

District	Net Railway Operating Income		Rate of Return	
	1943	1942	1943	1942
Eastern District (Incl. Pocahontas Region)	$647,539,912	$466,770,654	5.24%	3.79%
Southern District (Excl. Pocahontas Region)	233,565,154	142,865,761	6.88	4.36
Western District	714,557,128	410,005,566	6.33	3.72
United States	1,595,662,194	1,019,641,981	5.90	3.83

Note: "Rate of Return" is computed on the property investment of the carriers as shown by their books, including material and supplies and cash, as of January 1, 1943 and 1942, respectively.

[fol. 2122]

EXHIBIT No. 37

Witness: Mohr

Statement Showing Railway Revenues and Expenses

Railways of Class I in the United States
(Excluding Switching and Terminal Companies)

	For the 12 months ended December 31			
			Increase 1942 over 1941	
	1942	1941	Amount	Per cent
Total Operating Revenues	$7,466,227,054	$5,346,699,998	$2,119,527,056	39.6
Freight	5,944,742,473	4,447,568,333	1,497,174,140	33.7
Passenger	1,028,185,625	514,687,031	513,498,594	99.8
Mail	111,377,031	108,192,466	3,184,565	2.9
Express	96,869,122	57,281,534	39,587,588	69.1
All other	285,052,803	218,970,634	66,082,169	30.2
Total Operating Expenses	4,601,429,943	3,664,232,235	937,197,708	25.6
Maint. of way & struct. *a*	796,383,461	603,088,380	193,295,081	32.1
Maint. of equipment *a*	1,211,083,970	992,612,933	218,471,037	22.0
Traffic	117,777,507	111,888,396	5,889,111	5.3
Transportation	2,241,990,544	1,774,958,783	467,031,761	26.3
General	158,300,919	138,201,020	20,099,899	14.5
All other	75,893,542	43,482,723	32,410,819	74.5
Net Operating Revenue	2,864,797,111	1,682,467,763	1,182,329,348	70.3
Taxes	1,202,443,297	547,230,070	655,213,227	119.7
Payroll Taxes	171,049,348	138,043,985	33,005,363	23.9
All Other Taxes	1,031,393,949	409,186,085	622,207,864	152.1
Operating Income	1,662,353,814	1,135,237,693	527,116,121	46.4
Equipment Rents	Dr 141,022,065	Dr 102,176,698	d 38,845,367	d 38.0
Joint Facility Rents	Dr 40,390,989	Dr 34,774,287	d 5,616,702	d 16.2
Net Railway Operating Income	1,480,940,760	998,286,708	482,654,052	48.3
Operating ratio per cent	61.63	68.53		
Average Mileage Represented	231,012	232,188	d 1,176	d 0.5
a Amount of depreciation included in maintenance of way and structures and equipment expenses	$247,403,404	$221,015,790		

[fol. 2123]

Rate of Return on Property Investment
12 months ended December 31

District	Net Railway Operating Income		Rate of Return	
	1942	1941	1942	1941
Eastern District (Incl. Pocahontas Region)	$611,617,649	$488,675,187	4.97%	3.97%
Southern District (Excl. Pocahontas Region)	214,151,928	138,673,395	6.54	4.35
Western District	655,171,183	370,938,126	5.94	3.42
United States	1,480,940,760	998,286,708	5.56	3.79

Note: "Rate of Return" is computed on the property investment of the carriers as shown by their books, including material and supplies and cash, as of January 1, 1942, and 1941, respectively.

Authority:
Publications of the Association of American Railroads,
Bureau of Railway Economics,
Washington, D. C.

[fol. 2124]

EXHIBIT No. 38

Witness: Mohr—I.C.C. Docket No. 28963

Statement Showing Total Operating Revenues, Expenses, and Net Railway Operating Income—United States
By Months, 1937 to 1942

Railways of Class I (Excluding Switching and Terminal Companies)

Month	1942	1941	1940	1939	1938	1937
	Total Operating Revenues					
January	$480,691,157	$377,374,190	$345,639,123	$305,778,767	$279,108,385	$331,707,494
February	462,486,015	358,413,499	313,594,852	276,904,334	251,037,015	321,853,619
March	540,300,287	416,319,161	327,131,789	315,091,017	283,017,974	377,725,321
April	572,531,295	375,008,368	321,567,097	282,117,754	268,213,597	351,506,719
May	601,064,747	442,285,876	343,494,649	302,617,948	272,609,400	352,542,542
June	623,687,416	455,022,722	344,952,789	321,616,735	282,080,672	351,651,223
July	665,181,539	485,446,396	366,220,237	332,435,852	299,589,726	365,085,700
August	683,806,778	493,674,008	381,538,438	344,399,562	315,335,418	359,611,956
September	697,792,146	488,978,901	382,714,515	381,117,880	322,542,835	363,070,851
October	745,584,165	517,604,960	413,712,272	419,717,399	353,384,223	372,925,813
November	690,108,128	457,011,853	375,498,853	368,026,730	319,629,288	318,180,377
December	702,995,272	479,560,154	381,936,980	345,180,252	318,281,016	300,320,822
Total—Calendar Year *a*	7,466,227,054	5,346,699,998	4,298,001,598	3,995,004,251	3,565,490,753	4,166,068,602

[fol. 2125]

Month	1942	1941	1940	1939	1938	1937
			Total Operating Expenses			
January	$348,780,936	$268,971,743	$257,395,976	$232,946,449	$232,565,356	$253,668,741
February	327,653,379	255,590,196	240,579,920	220,619,933	215,353,899	244,080,932
March	360,140,105	283,328,538	248,634,646	240,358,779	229,004,115	266,198,097
April	366,755,692	274,938,371	245,877,517	227,622,288	219,484,312	261,949,013
May	375,449,774	296,590,475	252,854,916	237,411,054	217,054,008	267,225,209
June	378,472,014	298,932,432	252,507,423	241,785,658	218,132,406	265,521,794
July	390,476,946	310,034,946	262,064,921	241,962,092	222,166,822	266,585,650
August	399,292,303	313,843,279	267,571,191	247,621,627	229,572,952	268,190,412
September	399,705,707	312,288,197	260,239,661	251,166,939	231,982,740	262,711,697
October	416,430,354	361,513,715	276,780,299	271,538,049	242,354,484	270,357,354
November	406,389,194	335,614,115	259,517,849	256,170,301	231,203,926	249,295,347
December	431,873,000	352,589,088	266,148,818	249,006,533	232,619,459	243,354,701
Total—Calendar Year *a*	4,601,429,943	3,664,232,235	3,090,173,137	2,918,209,708	2,722,199,007	3,119,064,934
			Net Railway Operating Income			
January	$68,966,384	$62,017,440	$46,012,810	$32,947,172	$7,144,036	$38,866,838
February	66,486,021	58,135,957	32,856,489	18,637,706	Def 1,909,133	38,783,618
March	92,388,079	80,170,452	37,034,270	34,375,047	14,728,275	69,881,244
April	102,034,439	52,074,739	34,120,523	15,323,766	9,397,133	48,357,724
May	109,672,054	88,104,433	47,408,236	25,172,741	16,665,684	44,239,456
June	118,730,968	93,316,121	48,090,785	39,166,788	25,159,522	59,354,317
July	133,001,365	106,381,904	57,725,166	48,996,611	38,431,251	60,985,276
August	135,264,075	111,411,489	66,530,180	54,567,356	45,421,781	50,756,743
September	154,631,717	104,358,836	74,715,435	86,529,622	50,406,298	59,621,184
October	184,680,008	94,047,046	87,638,354	101,716,356	68,594,769	60,860,439
November	148,948,998	68,933,019	71,560,226	70,414,617	49,692,171	32,519,097
December	170,850,986	79,332,410	78,850,744	60,981,299	49,418,855	25,994,857
Total—Calendar Year *a*	1,480,940,760	998,286,708	682,543,218	588,829,083	372,873,771	590,203,925

a "Total—Calendar Year" based on annual reports for years 1937 to 1940 and revised monthly reports for 1941, and do not always agree with the sum of the monthly totals.

Authority:
Publications of the Association of American Railroads,
Bureau of Railway Economics,
Washington, D. C.

Statement Showing Total Operating Revenues, Expenses and Net Railway Operating Income—United States
By Months 1938 to 1943
Railways of Class I (Excluding Switching and Terminal Companies)

Month	1943	1942	1941	1940	1939	1938
Total Operating Revenues						
January	$671,334,151	$480,688,115	$377,374,190	$345,639,123	$305,778,767	$279,108,385
February	663,533,786	462,482,839	358,413,499	313,594,852	276,904,334	251,037,015
March	756,250,563	540,300,226	416,319,161	327,131,789	315,091,017	283,017,974
April	—	572,531,295	375,008,368	321,567,097	282,117,754	268,213,597
May	—	601,064,747	442,285,876	343,494,649	302,617,948	272,609,400
June	—	623,687,416	455,022,722	344,952,789	321,616,735	282,080,672
July	—	665,181,539	485,446,306	366,220,237	332,435,852	299,589,726
August	—	683,806,778	493,674,008	381,538,438	344,399,562	315,335,418
September	—	697,792,146	488,978,901	382,714,515	381,117,880	322,542,835
October	—	745,584,165	517,604,960	413,712,272	419,717,399	353,384,223
November	—	690,108,128	457,011,853	375,498,853	368,026,739	319,629,288
December	—	702,995,272	479,560,154	381,936,980	345,180,252	318,281,016
Total—Calendar Year *a*	—	7,466,227,054	5,346,699,997	4,296,600,653	3,995,004,251	3,565,490,753
Total Operating Expenses						
January	$424,201,291	$348,738,936	$268,971,743	$257,395,976	$232,946,449	$232,565,356
February	408,459,307	327,603,933	255,590,196	240,579,920	220,619,933	215,353,899
March	449,440,079	360,152,483	283,328,538	248,634,646	240,358,779	229,004,115
April	—	366,755,692	274,938,371	245,877,517	227,622,288	219,184,312
May	—	375,449,774	296,590,475	252,854,916	237,411,054	217,054,008
June	—	378,472,014	298,932,432	252,507,423	241,785,658	218,132,406
July	—	390,476,946	310,034,946	262,064,921	241,962,092	222,166,822
August	—	399,292,303	313,843,279	267,571,191	247,621,627	229,572,952
September	—	399,705,707	312,288,197	260,239,661	251,166,939	231,982,740
October	—	416,430,354	361,513,715	276,780,299	271,538,049	242,354,484
November	—	406,389,194	335,614,115	259,517,849	256,170,301	231,203,926
December	—	431,873,000	352,589,088	266,148,818	249,006,533	232,619,459
Total—Calendar year *a*	—	4,604,429,943	3,664,232,230	3,089,417,209	2,918,209,708	2,722,199,007

Statement Showing Total Operating Revenues, Expenses and Net Railway Operating Income—United States
By Months 1938 to 1943
(Railways of Class I (Excluding Switching and Terminal Companies)

Month	1943	1942	1941	1940	1939	1938
			Net Railway Operating Income			
January	$105,296,534	$66,850,765	$62,017,440	$46,012,810	$32,947,172	$7,144,036
February	106,132,776	64,345,273	58,135,957	32,856,489	18,637,706 Def	1,909,133
March	129,647,038	90,571,693	80,170,452	37,034,270	34,375,047	14,728,375
April	—	102,034,439	52,074,739	34,120,523	15,323,766	9,397,133
May	—	109,672,054	88,104,433	47,408,236	25,172,741	16,665,684
June	—	118,730,968	93,316,121	48,090,785	39,166,788	25,159,522
July	—	133,001,365	106,381,904	57,725,166	48,996,611	38,431,251
August	—	135,264,075	111,411,489	66,530,180	54,567,356	45,421,781
September	—	154,631,717	104,358,836	74,715,435	86,529,622	50,406,298
October	—	184,680,008	94,047,046	87,638,354	101,716,356	68,594,769
November	—	148,948,998	68,933,019	71,560,226	70,414,617	49,692,171
December	—	170,850,986	79,332,410	78,850,744	60,981,299	49,418,855
Total—Calendar year *a*	—	1,480,940,760	998,255,787	682,133,478	588,829,083	372,873,771

a "Total calendar year" based on annual reports for years 1938 to 1941 and revised monthly reports for 1942 and do not always agree with the sum of the monthly totals.

Authority:
Publication of The Association of American Railroads,
Bureau of Railway Economics,
Washington, D. C.

[fol. 2127]

Statement Showing

Operating Income Account—United States—Three Months Ended March 1938 to 1943
Railways of Class I (Excluding Switching and Terminal Companies)

Account	1943	1942	1941	1940	1939	1938
Total operating revenues	$2,091,164,289	$1,483,477,396	$1,152,106,851	$986,365,762	$897,774,120	$813,163,372
Freight	1,612,804,891	1,215,832,717	952,358,822	807,528,262	729,100,310	643,749,212
Passenger	340,397,087	169,549,055	116,699,758	101,285,663	96,222,662	99,678,806
Mail	28,835,252	26,095,740	25,254,653	24,284,626	23,673,379	23,165,598
Express	29,507,879	17,443,173	12,285,193	12,027,393	11,786,346	9,932,082
All Other	79,619,180	54,556,711	45,508,425	41,239,818	36,991,423	36,637,674
Total operating expenses	1,282,103,531	1,036,586,797	807,887,616	746,610,542	693,925,162	676,923,373
Maint. of Way & Struct.	225,500,631	151,875,348	114,050,969	103,551,564	96,648,290	92,109,260
Maint. of Equipment	327,969,691	282,460,249	224,052,271	200,631,193	186,226,385	170,970,472
Traffic	30,294,580	28,861,027	26,694,796	26,389,087	25,764,560	25,842,079
Transportation	630,802,560	520,194,522	400,364,434	374,429,023	344,729,704	345,961,172
General	43,246,651	38,272,693	32,798,143	32,594,947	32,145,170	32,926,353
All Other	24,289,418	14,922,958	9,927,003	9,014,728	8,411,053	9,114,037
Net operating revenue	809,060,758	446,890,599	344,219,235	239,755,220	203,848,958	136,239,999
Taxes	422,222,184	188,573,161	112,455,618	91,515,147	86,089,133	84,244,272
Operating income	386,838,574	258,317,438	231,763,617	148,240,073	117,759,825	51,995,727
Equipment Rents	Dr 35,656,824	Dr 27,635,567	Dr 23,274,778	Dr 24,379,461	Dr 23,101,121	Dr 22,951,684
Joint Facility Rents	Dr 10,121,983	Dr 8,999,888	Dr 8,162,129	Dr 7,957,046	Dr 8,698,778	Dr 9,080,865
Net railway operating income	341,059,767	221,681,983	200,326,710	115,903,566	85,959,926	19,963,178
Operating ratio—per cent	61.31	69.88	70.12	75.69	77.29	83.25
Average mileage represented	229,595	231,596	232,384	233,065	233,714	234,803

AUTHORITY: Publication of The Association of American Railroads, Bureau of Railway Economics, Washington, D. C.

[fols. 2128-2133]

Statement Showing Operating Income Account—United States—Twelve Months Ended December, 1937 to 1942
Railways of Class I (Excluding Switching and Terminal Companies)

Account	1942	1941	1940	1939	1938	1937
Total operating revenues	$7,466,227,054	$5,346,699,998	$4,298,001,598	$3,995,004,243	$3,564,829,551	$4,166,068,601
Freight	5,944,742,473	4,447,568,333	3,537,440,970	3,251,096,130	2,857,899,307	3,378,108,652
Passenger	1,028,185,625	514,687,031	417,268,962	416,903,149	405,424,288	442,809,304
Mail	111,377,031	108,192,466	101,086,894	99,012,370	95,954,093	97,983,881
Express	96,869,122	57,281,534	55,642,988	55,189,590	48,454,746	57,682,929
All other	285,052,803	218,970,634	186,561,784	172,803,004	157,097,117	189,483,835
Total operating expenses	4,601,429,943	3,664,232,235	3,090,173,137	2,918,209,706	2,721,494,485	3,119,064,932
Maint. of way & struct.	796,383,461	603,088,380	497,167,786	466,830,717	420,088,057	495,593,910
Maint. of equipment	1,211,083,970	992,612,933	819,103,106	765,935,263	676,374,537	826,708,829
Traffic	117,777,507	111,888,396	107,593,047	106,734,544	102,526,398	105,478,227
Transportation	2,241,990,544	1,774,958,783	1,501,392,805	1,417,793,911	1,361,041,910	1,510,274,991
General	158,300,919	138,201,020	130,498,100	127,568,819	127,501,411	145,344,848
All other	75,893,542	43,482,723	34,418,293	33,346,452	33,962,172	35,664,127
Net operating revenue	2,864,797,111	1,682,467,763	1,207,828,461	1,076,794,537	843,335,066	1,047,003,669
Taxes	1,202,443,297	547,230,070	396,623,016	355,677,557	340,694,548	325,665,199
Operating income	1,662,353,814	1,135,237,693	811,205,445	721,116,980	502,640,518	721,338,470
Equipment rents	Dr 141,022,065	Dr 102,176,698	Dr 95,735,682	Dr 96,518,027	Dr 94,868,737	Dr 95,020,922
Joint facility rents	Dr 40,390,989	Dr 34,774,287	Dr 32,926,545	Dr 35,769,876	Dr 34,621,142	Dr 36,113,652
Net railway operating income	1,480,940,760	998,286,708	682,543,218	588,829,077	373,150,639	590,203,896
Operating ratio—per cent	61.63	68.53	71.90	73.05	76.34	74.87
Average mileage represented	231,012	232,188	232,824	233,462	234,436	235,511

Authority:
Publications of the
Association of American Railroads
Bureau of Railway Economics
Washington, D. C.

(Here follows 1 paster, side folios 2134, 2135-2217)



[Id. 2134]

Subject to Revision

EXHIBIT No. 40
Statement No. M-250, December 1942—Witness Bruce

Interstate Commerce Commission
Bureau of Transport Economics and Statistics

Passenger Traffic Statistics (Other Than Commutation) of Class I Steam Railways in the United States
Separated between Coach Traffic and Parlor and Sleeping Car Traffic

Compiled from 119 reports representing 128 steam railways
(Switching and Terminal Companies not Included)

For the month of December 1942 and 1941

District and region	AGGREGATES: Passenger revenue (whole dollars)		Number of revenue passengers carried		Number of revenue passengers carried one mile		AVERAGES: Revenue per passenger-mile (cents)		Revenue per passenger per road (dollars)		Miles per passenger per road	
	In coaches	In parlor and sleeping cars	In coaches	In parlor and sleeping cars	In coaches	In parlor and sleeping cars	In coaches	In parlor and sleeping cars	In coaches	In parlor and sleeping cars	In coaches	In parlor and sleeping cars
United States (total):												
1942	$71,381,614	$43,269,650	39,693,554	4,330,009	4,117,159,816	1,799,483,807	1.73¢	2.40¢	$1.80	$9.99	103.7	415.6
1941	29,131,211	21,100,580	22,114,223	2,282,953	1,767,943,557	934,999,831	1.65	2.26	1.32	9.24	79.9	409.6
Percent of change	+145.0	+105.1	+79.5	+89.7	+132.9	+92.5	+4.8	+6.2	+36.4	+8.1	+29.8	+1.5
Eastern District:												
1942	31,929,117	13,680,899	25,774,619	1,438,518	1,734,114,824	464,690,912	1.84	2.94	1.24	9.51	67.3	323.0
1941	15,060,364	8,581,832	14,859,712	1,014,982	841,412,913	318,490,996	1.79	2.69	1.01	8.46	56.6	313.8
Percent of change	+112.0	+59.4	+73.5	+41.7	+106.1	+45.9	+2.8	+9.3	+22.8	+12.4	+18.9	+2.9
Southern District:												
Pocahontas Region,												
1942	2,700,850	1,318,562	1,347,949	168,927	163,053,757	48,184,854	1.66	2.74	2.00	7.81	121.0	285.2
1941	912,315	484,005	544,143	90,905	56,355,211	19,068,140	1.62	2.54	1.68	5.32	103.6	209.8
Percent of change	+196.0	+172.4	+147.7	+85.8	+189.3	+152.7	+2.5	+7.9	+20.5	+46.8	+16.8	+35.9
Southern Region,												
1942	12,840,228	7,099,412	5,998,589	840,452	739,920,580	265,179,845	1.74	2.68	2.14	8.45	123.3	315.5
1941	4,935,352	2,913,179	3,646,319	348,758	334,260,552	114,138,232	1.48	2.55	1.35	8.35	91.7	327.3
Percent of change	+160.2	+143.7	+64.5	+141.0	+121.4	+132.3	+17.6	+5.1	+58.5	+1.2	+34.5	−3.6
Western District:												
1942	23,911,419	21,170,777	6,572,397	1,882,112	1,480,070,655	1,021,428,196	1.62	2.07	3.64	11.25	225.2	542.7
1941	8,223,180	9,121,564	3,064,049	828,308	535,914,881	483,302,463	1.53	1.89	2.68	11.01	174.9	583.5
Percent of change	+190.8	+132.1	+114.5	+127.2	+176.2	+111.3	+5.9	+9.5	+35.8	+2.2	+28.8	−7.0

NOTE.—Statistics of commutation passenger traffic are published in Statement No. M-220, Revenue Traffic Statistics.

(OVER)

[Ids. 2135-2217]

United States (total):												
1942	$548,524,998	$429,203,332	353,862,886	45,382,936	31,066,087,009	17,852,466,169	1.77¢	2.40¢	$1.55	$9.46	87.8	393.4
1941	264,333,791	209,152,784	229,967,500	24,158,390	16,106,036,240	9,166,038,661	1.64	2.28	1.15	8.66	70.0	379.4
Percent of change	+107.5	+105.2	+53.9	+87.9	+92.9	+94.8	+7.9	+5.3	+34.8	+9.2	+25.4	+3.7
Eastern District:												
1942	278,946,289	147,470,528	243,044,041	17,201,612	14,477,048,849	5,039,889,589	1.93	2.93	1.15	8.53	59.6	291.5
1941	145,063,716	85,319,926	159,840,287	10,881,642	8,067,426,377	3,167,537,556	1.80	2.69	.91	7.84	50.5	291.1
Percent of change	+92.3	+72.8	+52.1	+58.9	+79.5	+59.1	+7.2	+8.9	+26.4	+8.8	+18.0	+0.1
Southern District:												
Pocahontas Region,												
1942	19,352,943	12,864,615	10,155,150	1,953,097	1,087,242,079	454,890,310	1.78	2.83	1.91	6.59	107.1	232.9
1941	7,917,173	5,515,928	6,244,260	1,062,506	508,267,306	212,669,356	1.56	2.59	1.27	5.19	81.4	200.2
Percent of change	+144.4	+133.2	+62.6	+83.8	+113.9	+113.9	+14.1	+9.3	+50.4	+27.0	+31.6	+16.3
Southern Region,												
1942	91,149,190	75,160,331	50,519,554	8,834,516	5,667,643,607	2,917,937,582	1.61	2.58	1.80	8.51	112.2	330.3
1941	40,809,774	30,445,578	34,115,741	3,937,325	2,823,737,469	1,286,277,447	1.45	2.37	1.20	7.73	82.8	326.7
Percent of change	+123.4	+146.9	+48.1	+124.4	+100.7	+126.9	+11.0	+8.9	+50.0	+10.1	+35.5	+1.1
Western District:												

[fol. 2218] [File endorsement omitted]

[fols. 2219-2220] IN UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF KENTUCKY

Civil Action No. 708

COMMONWEALTH OF KENTUCKY, and RAILROAD COMMISSION OF KENTUCKY, Plaintiffs,

vs.

UNITED STATES OF AMERICA, Defendant

PETITION—Filed June 12, 1944

Come now Commonwealth of Kentucky, and Railroad Commission of Kentucky, plaintiffs herein, and for cause of action say:

I

This suit is brought pursuant to the provisions of Sections 41(28), 43, and 45-48, inclusive, of Title 28, of the United States Code.

II

Plaintiffs were protestants in the proceeding before the Interstate Commerce Commission, described more fully hereinafter, wherein the order sought herein to be enjoined, set aside and annulled, was issued.

Plaintiff, Commonwealth of Kentucky, is a sovereign state, and is represented in this proceeding by Eldon S. Dummit, its duly elected, qualified and acting Attorney General, who brings this suit in its behalf and by his authority as such Attorney General.

Plaintiff, Railroad Commission of Kentucky, is a body politic, created by the Constitution of the Commonwealth of Kentucky, and is represented in this proceeding by Frank L. McCarthy, Jack E. Fisher, and Clay M. Bishop, its duly elected, qualified and acting members, who bring this suit in its behalf and in behalf of the citizens of Kentucky, and by their authority as such members. Under the Constitution and laws of the Commonwealth of Kentucky, plaintiff, Railroad Commission of Kentucky, is charged with the duty and authority of supervising, regulating and enforcing all rates, fares and charges for transportation services per-

formed by the railroads as common carriers in intrastate commerce within the state of Kentucky.

Plaintiffs have their principal offices and places of business at Frankfort, Ky.

[fol. 2221]

III

United States of America is made defendant herein by virtue of the provisions of Section 46, of Title 28, of the United States Code.

IV

This suit is brought in the United States District Court for the Western District of Kentucky pursuant to the provisions of Section 43, of Title 28, of the United States Code. Louisville and Nashville Railroad Company is one of the parties upon whose petition the order of the Interstate Commerce Commission hereinafter complained of was made. Said Louisville and Nashville Railroad Company is a Kentucky corporation, and has its residence and principal office in the federal judicial district in which this complaint is brought.

V

Plaintiffs bring this suit to enjoin, set aside, and annul a certain corrected order entered by the Interstate Commerce Commission on the 8th day of May, A. D., 1944, in a proceeding known as "Docket No. 29000, Kentucky Intrastate Fares", instituted by the Interstate Commerce Commission by its order of July 10, A. D., 1943, pursuant to a petition theretofore filed with it by certain railroad companies, operating as common carriers in the state of Kentucky, among which was the Louisville and Nashville Railroad Company, as aforesaid. A copy of said corrected order of the Interstate Commerce Commission, dated May 8, 1944, is attached hereto as a part hereof, marked Exhibit A.

VI

In addition to Louisville and Nashville Railroad Company, the other parties on whose petition the corrected order of the Interstate Commerce Commission of May 8, 1944, was made, are The Chesapeake and Ohio Railway Company; The Cincinnati, New Orleans and Texas Pacific Railway Company; Gulf, Mobile and Ohio Railroad Company; Illinois Central Railroad Company; The Nashville,

Chattanooga & St. Louis Railway; and Southern Railway Company. These railroads will be referred to individually hereinafter as L. & N., C. & O., C. N. O. & T. P., G. M. & O., I. C., N. C. & St. L., and Southern, respectively, and collectively as Kentucky railroads.

VII

By the corrected order of the Interstate Commerce Commission, dated May 8, 1944, mentioned hereinbefore, the Kentucky railroads are notified and required to establish on or before July 1, 1944, certain minimum fares for the transportation of persons in railway coaches between points in the state of Kentucky over routes wholly within the boundaries of said state, and the said minimum fares, which are required to be established by said order, are higher [fol. 2222], than the fares from and to the same points over the same routes, which now apply, and which have been in effect with little or no change since February 10, 1942. The differences between the present fares and the minimum fares which the Kentucky railroads are required to establish by said corrected order vary, but for the most part the minimum required to be established exceed the present fares by thirty-three and one-third per cent (33⅓%). If the Kentucky intrastate passenger coach fares are increased, as required by said corrected order, the gross revenues of the Kentucky railroads will be increased in the aggregate by more than Five Hundred Thousand Dollars ($500,000) per annum, based on the present amount of passenger coach travel within the state of Kentucky, and the said increase, plus the federal tax thereon, will have to be paid by the Kentucky intrastate coach passengers.

VIII

The establishment of the increased passenger coach fares, required by the corrected order of the Interstate Commerce Commission of May 8, 1944, would be contra to, and in violation of, the opinion, findings and orders of the Railroad Commission of Kentucky, dated May 31, 1943, in a proceeding before that body, known as *Suspension Docket No. 29, Increased Passenger Fares and Charges.* A copy of such opinion, findings, and orders of the Kentucky Commission is attached hereto as a part hereof, marked Exhibit B. Said opinion, findings and orders of the Kentucky Commission,

dated May 31, 1943, have not been modified or set aside, and are presently in effect.

IX

For many years prior to 1936 the basic interstate passenger coach fare of Class I American railroads was 3.6 cents per passenger-mile but many of these railroads published and maintained lower interstate fares. Beginning with December 1, 1933, and continuing through November 14, 1937, most of the railroads operating in the territory south of the Ohio and Potomac Rivers and east of the Mississippi River, and including the L. & N., C. & O. (Winchester to Louisville, Ky., inclusive), C. N. O. & T. P., N. C. & St. L., and Southern, published and maintained an interstate passenger coach fare of 1.5 cents per passenger-mile for one-way trips, and a 10 per cent lower fare, or 1.35 cents per passenger mile, for round-trips. During this same period other southern railroads, including G. M. & O. and I. C., maintained an interstate passenger coach fare of 2 cents per passenger-mile.

X

In a proceeding known as *Docket 26350, Passenger Fares and Surcharges,* decided February 28, 1936, and reported in 214 ICC 174, the Interstate Commerce Commission found that the basic fare of 3.6 cents per passenger-mile [fol. 2223] on interstate passenger coach travel was, and for the future would be, unreasonable to the extent that it exceeded 2 cents per passenger-mile. In the same proceeding, at page 257, the Commission found that the interstate coach fares then being maintained and charged by certain southern railroads, including some of the Kentucky railroads named herein, of 1.5 cents one-way, and 1.35 cents round-trip, were not unreasonable or otherwise unlawful. Pursuant to the findings and orders in *Passenger Fares and Surcharges, supra,* the basic interstate coach fare was reduced from 3.6 cents to 2 cents per passenger-mile on June 1, 1936, and remained on that basis until February 10, 1942, when it was increased to 2.2 cents per passenger-mile. The increase of 10 per cent in the interstate passenger coach fares was authorized by the Interstate Commerce Commission in an order, dated January 21, 1942, and entered in a proceeding known as *Ex Parte 148, Increased Railway Rates, Fares and Charges, 1942,* 242 ICC 545. This in-

crease was designed to take care of increased expenses of the railroads incident to the war period and is limited to the duration of the war and six months thereafter. No change has been made in the basic interstate passenger coach fare since February 10, 1942.

XI

Pursuant to the findings of the Interstate Commerce Commission in *Passenger Fares and Surcharges,* 214 ICC 174, certain southern railroads, including L. & N., C. & O. (Winchester to Louisville, inclusive), C. N. O. & T. P., N. C. & St. L., and Southern, continued to charge interstate passenger coach fares of 1.5 cents one-way and 1.35 cents round trip, to and including November 14, 1937. Effective November 15, 1937, these fares were increased to 2 cents one-way and 1.8 cents round trip, which fares were maintained to and including January 14, 1939. Effective January 15, 1939 said fares were again reduced to 1.5 cents one-way and 1.35 cents round-trip, and remained on that basis to and including February 9, 1942. Effective February 10, 1942 said fares were increased 10 per cent pursuant to *Ex Parte 148, Increased Railway Rates, Fares and Charges,* 242 ICC 545, and thereby became 1.65 cents one-way and 1.485 cents round-trip. No further changes were made in said fares until October 1, 1942, at which time they were increased to 2.2 cents one-way and 1.98 cents round-trip, which fares are still in effect.

XII

Prior to October 1, 1942 the Kentucky railroads generally maintained and charged the same coach fares on Kentucky intrastate traffic as on interstate traffic. One exception to this general rule was that the G. M. & O. and I. C. voluntarily maintained a round-trip intrastate passenger coach fare of 1.5 cents for about two years prior to February 10, [fol. 2224] 1942, and 1.65 cents thereafter, as compared with a round-trip interstate coach fare of 2 cents prior to February 10, 1942 and 2.2 cents thereafter. Another exception was that the C. & O. on its Big Sandy Division, Ashland to Elkhorn City, Ky., including branches, voluntarily maintained an intrastate passenger coach fare of 1.65 cents one-way and 1.25 cents round-trip, as compared with 2.2 cents on interstate travel.

XIII

When the Kentucky railroads increased their interstate coach fares from 1.65 cents to 2.2 cents one-way, and from 1.485 cents to 1.98 cents round-trip, on October 1, 1942, they did not undertake to make any corresponding increases in the Kentucky intrastate passenger coach fares, but on or about October 20, 1942, said railroads filed with the Railroad Commission of Kentucky certain tariff schedules to become effective December 1, 1942, designed to raise the Kentucky intrastate passenger coach fares to the level of the corresponding interstate fares. As explained hereinbefore, these increases vary, but generally they amount to 33⅓ per cent. No increases, however, were then proposed, or have since been proposed, in the intrastate passenger coach fares of 1.65 cents one-way and 1.25 cents round-trip on the Big Sandy Division of the C. & O.

XIV

Following the filing of the tariff schedules containing increases in the Kentucky intrastate fares to become effective December 1, 1942, protests against such increases were received by the Railroad Commission of Kentucky from the Office of Price Administration and Price Administrator of the United States, and various citizens of Kentucky. Acting upon these protests the Kentucky Commission suspended the operation of said schedules pending a hearing and investigation as to their lawfulness. Said hearing was held by the Kentucky Commission at Frankfort, Ky., on May 14, 1943, and on May 31, 1943 the Commission issued its opinion, findings and orders in said proceeding, namely, *Suspension Docket No. 29, Increased Passenger Fares and Charges,* hereinbefore mentioned. In said report, attached hereto as Exhibit B, certain proposed increases in the intrastate fares for parlor and sleeping car travel were found justified, but the proposed increases in the intrastate fares for passenger coach travel were found not justified and the schedules containing such increases were ordered canceled.

XV

By petition dated June 24, 1943, the Kentucky railroads prayed the Interstate Commerce Commission to institute an investigation under the provisions of the Interstate

Commerce Act, as amended, to determine whether the refusal of the Kentucky Railroad Commission to authorize [fol. 2225] or permit increases in Kentucky intrastate passenger coach fares causes any undue or unreasonable advantage, preference or prejudice as between persons or localities in intrastate commerce, on the one hand, and interstate or foreign commerce, on the other, or any undue, unreasonable, or unjust discrimination against interstate or foreign commerce. Pursuant to said petition the Interstate Commerce Commission did institute said investigation by its order of July 10, 1943, and said proceeding was designated as *Docket 29000, Kentucky Intrastate Fares.*

XVI

Hearings were held in *Docket 29000, Kentucky Intrastate Fares*, before an examiner of the Interstate Commerce Commission at Frankfort, Ky., on September 8 and 9, 1943, at which evidence was heard in the aforesaid proceeding and a transcript of the testimony and record was made by the Official Reporter of the Commission.

XVII

After the taking of such evidence, and hearing counsel on brief and argument, the Interstate Commerce Commission did on March 25, 1944, issue its report and findings in said proceeding, and in similar proceedings involving intrastate fares in the states of Alabama, North Carolina and Tennessee, wherein it made the following general findings:

1. The interstate one-way and round-trip coach fares now in effect to, from, and through points in Alabama, Kentucky, North Carolina, and Tennessee, and the interstate round-trip fares applicable in sleeping and parlor cars now in effect to, from, and through points in Alabama and Tennessee, are just and reasonable.

2. The intrastate one-way and round-trip coach fares in Alabama, Kentucky, North Carolina, and Tennessee, with certain exceptions hereinbefore referred to and not here in issue, and the intrastate round-trip fares applicable in sleeping and parlor cars in Alabama and Tennessee, are lower than the corresponding fares applicable interstate and intrastate gen-

erally throughout southern territory, except in the several States mentioned in this finding.

3. The conditions affecting the one-way and round-trip transportation of passengers in coaches within these four States, and the round-trip transportation of passengers in sleeping and parlor cars within Alabama and Tennessee, intrastate on the one hand, and interstate to, from, and through those respective States on the other, are substantially similar.

4. Interstate passengers in these States travel in the same trains and generally in the same cars with intrastate passengers, but are forced to pay higher fares than the intrastate passengers for like services, to the undue and unreasonable advantage and prefer- [fol. 2226] ence of the intrastate passengers and the undue and unreasonable disadvantage and prejudice of the interstate passengers.

5. Respondents' revenues under the lower intrastate fares are less by at least $725,000 per annum in Alabama, $500,000 in Kentucky, $525,000 in North Carolina, and $525,000 in Tennessee than they would be if those fares were increased to the level of the corresponding interstate fares, and traffic moving under these lower intrastate fares is not contributing its fair share of the revenues required to enable respondents to render adequate and efficient transportation service.

6. The maintenance of intrastate one-way and round-trip coach fares in Alabama, Kentucky, North Carolina, and Tennessee, and of intrastate round-trip fares applicable in sleeping and parlor cars in Alabama and Tennessee, to the extent that such fares are on a lower level than the corresponding interstate fares, causes and will cause undue and unreasonable advantage to and preference of persons in intrastate commerce, undue and unreasonable disadvantage to and prejudice against persons in interstate commerce, and undue, unreasonable, and unjust discrimination against interstate commerce; and this unlawfulness should be removed by increasing the aforesaid intrastate fares in the respective States to the level of the corresponding

interstate fares contemporaneously maintained by respondents to, from and through such States; provided, that the aggregate charge made by any of respondents for the intrastate transportation in any of the States shall not exceed the aggregate charge made for like accommodations and for a like distance by the same respondent for interstate transportation to, from, or through such State.

The findings just quoted were made subject to the provisions of the paragraph quoted below:

> The foregoing findings are without prejudice to the right of the authorities of the affected States, or of any interested party, to apply for modification thereof as to any specific intrastate fare on the ground that such fare is not related to interstate fares in such a way as to contravene the provisions of the Interstate Commerce Act.

In its opinion, the Commission made no order, but stated:

> In accordance with our practice in such proceedings, we shall leave to respondents and the respective State Commissions the matter of adjusting the intrastate fares to conform to these findings. If this is not accomplished within 30 days from the service of this report, consideration will be given to the entry of an appropriate order.

[fol. 2227] A complete copy of said opinion and findings is filed herewith as a part hereof, marked Exhibit C.

XVIII

On or about April 25, 1944, plaintiffs herein filed with the Interstate Commerce Commission their petition for reopening of *Docket 29000, Kentucky Intrastate Fares*, for reargument and reconsideration, but by its order dated May 8, 1944, the Interstate Commerce Commission denied said petition. A copy of said order is attached hereto as a part hereof, marked Exhibit D.

XIX

Plaintiffs are precluded from filing additional petitions for reopening and for reconsideration of the findings and

orders in *Docket 29000, Kentucky Intrastate Fares*, by the Interstate Commerce Commission's Rules of Practice, and particularly by Rule 101(f) which reads as follows:

> *Successive petitions on same grounds, not entertained.*—A successive petition under subdivision (d) of this rule filed by the same party or parties, and upon substantially the same grounds as a former petition, which has been considered and denied by the entire Commission, or by an appropriate appellate division, will not be entertained.

XX

The hearing in *Docket 29000, Kentucky Intrastate Fares*, held at Frankfort, Ky., on September 8 and 9, 1943, was conducted by Examiner C. E. Stiles, of the Interstate Commerce Commission, and said examiner on or about December 10, 1943, issued a proposed report in which he made the recommendations set forth below:

> Upon these facts it is recommended that the Commission find that the intrastate rates imposed by authority of the State of Kentucky have not been shown to cause any undue or unreasonable advantage, preference or prejudice as between persons or localities in intrastate commerce on the one hand and interstate or foreign commerce on the other hand.
>
> * * * * * * *
>
> Upon the facts found it is recommended that the Commission find that the intrastate fares herein considered, imposed by State authority, do not cause any undue, unreasonable, or unjust discrimination against interstate or foreign commerce.
>
> * * * * * * *
>
> An order discontinuing the proceeding should be entered.

A complete copy of the examiner's report is attached hereto as a part hereof, marked Exhibit E.

[fol. 2228] XXI

At the time *Docket 29000, Kentucky Intrastate Fares*, was decided there was a vacancy on the Interstate Com-

merce Commission and only ten commissioners participated in the decision. Seven of these commissioners, including two who did not hear the oral arguments, joined in the majority report. A dissenting opinion was written by Commissioner Splawn and concurred in by Commissioners Aitchison and Mahaffie, and is heretofore filed as a part of Exhibit C. The opening paragraph of said opinion reads as follows:

> In my judgment the decision of the majority on the evidence in these proceedings goes beyond our lawful power under section 13(4). This view, I think, finds full support in several decisions by the Supreme Court of the United States in which the Court has had occasion to review some of our reports and orders under that section.

XXII

The opinion of the majority in *Docket 29000, Kentucky Intrastate Fares,* does not include a finding of undue prejudice or discrimination as between localities in intrastate commerce, on the one hand, and interstate commerce, on the other hand.

XXIII

Kentucky intrastate railway coach fares now average about 10 per cent higher than the corresponding bus fares. If these coach fares are increased as required by the Interstate Commerce Commission's corrected order of May 8, 1944, they will exceed the bus fares by more than 40 per cent.

XXIV

The corrected order herein sought to be enjoined, set aside, and annulled provides only for minimum intrastate fares within the State of Kentucky and there is nothing in said order to prevent the Kentucky railroads from publishing and collecting fares higher than those applicable on interstate traffic without interference from the Railroad Commission of Kentucky.

XXV

Plaintiffs allege, as a matter of law, that the corrected order of the Interstate Commerce Commission of May 8, 1944, which they seek herein to have enjoined, set aside,

and annulled, constitutes an unwarranted and wholly unjustified invasion of the sovereignty of the Commonwealth of Kentucky in that it exceeds the powers granted to the Federal Congress by the Commerce Clause of Section 8 of Article I of the Constitution of the United States, and that said order contravenes the Fifth and Tenth Amendments of said Constitution.

[fol. 2229] XXVI

Plaintiffs allege, as a matter of law, that there is no evidence to support the finding, set forth hereinbefore under Paragraph XVII, Finding 1, that the interstate one-way and round-trip coach fares now in effect to, from and through points in Kentucky, are just and reasonable. The evidence shows that the present basic interstate coach fare of two cents per passenger-mile was prescribed by the Interstate Commerce Commission as a maximum fare in 1936, and that the Kentucky railroads are now enjoying unparalleled prosperity and are handling record-breaking amounts of freight and passenger traffic.

XXVII

Plaintiffs allege, as a matter of law, that the finding set forth hereinbefore under Paragraph XVII, Finding 2, that the Kentucky intrastate coach fares are lower than the corresponding interstate and certain intrastate coach fares in southern territory is not material to the issues herein. The mere existence of a disparity between rates on intrastate and interstate traffic does not warrant the Interstate Commerce Commission in prescribing intrastate rates.

XXVIII

Plaintiffs allege, as a matter of law, that there is no evidence to support the finding, set forth hereinbefore under Paragraph XVII, Finding 3, that the conditions affecting the transportation of persons in coaches within Kentucky, intrastate, on the one hand, and interstate to, from and through Kentucky, on the other, are substantially similar.

XXIX

Plaintiffs allege, as a matter of law, that there is no evidence to support the finding set forth hereinbefore under Paragraph XVII, Finding 4, that the Kentucky intrastate

coach fares result in undue preference of intrastate passengers and undue prejudice of interstate passengers. No interstate passenger testified at the hearing concerning such alleged preference and prejudice.

XXX

Plaintiffs allege, as a matter of law, that there is no evidence to support the finding, set forth hereinbefore under Paragraph XVII, Finding 5, that the traffic moving under the Kentucky intrastate fares is not contributing its fair share of the revenues required to enable the Kentucky railroads to render adequate and efficient railroad service. The Kentucky railroads did not present a cost study covering their Kentucky intrastate passenger operations. The evidence shows that the earnings of the Kentucky railroads from their passenger operations have increased tremendously during the war period as compared with the prewar period.

[fol. 2230] XXXI

Plaintiffs allege, as a matter of law, that there is no evidence to support the findings set forth hereinbefore under Paragraph XVII, Finding 6, that the Kentucky intrastate coach fares cause undue preference of persons in intrastate commerce, or undue prejudice against persons in interstate commerce, or unjust discrimination against interstate commerce. No interstate passengers appeared at the hearing and complained of the Kentucky intrastate fares. A witness for the Kentucky railroads testified at page 34 of the transcript that said railroads are not in need of additional revenue. The evidence clearly shows that during 1942 and 1943 the Kentucky railroads have had tremendous increases in their freight and passenger traffic, and in their revenues accruing therefrom.

XXXII

Plaintiffs allege, as a matter of law, that the defects in findings, enumerated hereinbefore under Paragraphs XXVI to XXXI, inclusive, will not be cured by the so-called saving clause set forth hereinbefore under Paragraph XVII, immediately following Finding 6, and that said saving clause would require intrastate passengers to go to the Interstate

Commerce Commission to get back what that Commission should never have taken over.

XXXIII

Plaintiffs allege, as a matter of law, that the findings of the Interstate Commerce Commission are inadequate to support the corrected order herein sought to be enjoined, set aside, and annulled.

XXXIV

Plaintiffs allege, as a matter of law, that the corrected order of the Interstate Commerce Commission of May 8, 1944, requiring increases in Kentucky intrastate fares, is in contravention of the stabilization program of the federal government as embodied in the Emergency Price Control Act of 1942 (Public Law 421, 77th Congress), the Act of October 2, 1942 (Public Law 729, 77th Congress), the President's Executive Orders 9250 of October 3, 1942, and 9328 of April 8, 1943.

XXXV

If the corrected order herein sought to be enjoined, set aside, and annulled becomes effective innumerable citizens of Kentucky would suffer immediate and irrevocable loss and damage, in that they would have no adequate remedy at law for recovering from the Kentucky railroads the increases in transportation charges, which increases in the aggregate amount to more than Five Hundred Thousand Dollars ($500,000) per annum, exclusive of the federal taxes thereon.

[fol. 2231] Wherefore, having exhausted their administrative and legal remedies, plaintiffs pray:

1. That process may issue against the defendant, United States of America, by delivering a copy of the summons and of the petition to the United States Attorney for the Western District of Kentucky, by sending a copy of the summons and of the petition by registered mail to the Attorney General of the United States at Washington, D. C., and by sending a copy of the summons and of the petition by registered mail to the Secretary of the Interstate Commerce Commission at Washington, D. C.

2. That the court suspend temporarily the corrected order of the Interstate Commerce Commission, dated May 8, 1944, and effective July 1, 1944, in order that plaintiffs and the general public within the State of Kentucky might not suffer irreparable loss and injury.

3. That a three-judge court be assembled, as required by statute, and that a hearing be held as early as convenient to the end that irreparable damage to plaintiffs and the citizens of Kentucky may be prevented, by the granting of a temporary restraining order and an interlocutory injunction.

4. That an interlocutory injunction, in addition to a temporary stay of the Commission's order, be granted restraining the enforcement and execution of said corrected order of the Interstate Commerce Commission.

5. That a permanent injunction be granted restraining the enforcement, operation and execution of said corrected order of the Interstate Commerce Commission.

6. That the corrected order of the Interstate Commerce Commission, dated May 8, 1944, and set forth in Exhibit A hereof, be set aside and annulled.

7. That the court make such other and further orders as are meet and proper in the premises, and plaintiffs will ever pray.

Eldon S. Dummit, Attorney General of Kentucky, State Capitol, Frankfort, Kentucky. M. B. Holifield, Assistant Attorney General of Kentucky, State Capitol, Frankfort, Kentucky, Attorneys for Plaintiffs.

J. E. Marks, 145 East High Street, Lexington 4, Kentucky, Of Counsel.

[fols. 2232-2234] *Duly sworn to by Frank L. McCarthy. Jurat omitted in printing.*

[fol. 2235] EXHIBIT "B" TO PETITION

Railroad Commission of Kentucky

Suspension Docket No. 29

Increased Passenger Fares and Charges

Submitted May 14, 1943. Decided May 31, 1943

1. Proposed increases in coach fares found not justified.

2. Proposed increases in parlor and sleeping car fares found justified.

L. L. Oliver and *W. A. Northcutt* for respondents.

John A. Bliss, Office of Price Administration, for Prentiss M. Brown, Price Administrator, and James F. Byrnes, Director of Economic Stabilization, protestants.

Henry M. Johnson, for himself and other protesting train riders.

M. B. Holifield, Assistant Attorney General, for Commonwealth of Kentucky.

J. E. Marks, for Railroad Commission of Kentucky.

Report of the Commission

By schedules filed to become effective December 1, 1942, the principal Class I railroads operating within the state proposed substantial increases in their intrastate passenger fares and charges. Upon protest of the Office of Price Administration and of the Price Administrator of the United States, and various citizens of Kentucky, the operation of these schedules was suspended for the statutory period of 210 days until June 28, 1943. Hearing was held by the full commission at the commission's offices in Frankfort on May 14, 1943, following which oral arguments were heard and the proceeding submitted for decision.

Summary of Proposed Changes

Appendix A hereto shows the present and suspended coach fares in cents per mile. From this appendix it will be observed that the Louisville & Nashville Railroad; Cincinnati, New Orleans and Texas Pacific Railway; Southern Railway; Nashville, Chattanooga and St. Louis Railway; and the Chesapeake and Ohio Railway (Winchester to

Louisville, inclusive), hereinafter called L. & N., C. N. O. & T. P., Southern, N. C. & St. L., and C. & O., respectively, propose to increase their one-way fares from 1.65 to 2.2 cents per mile, and their round-trip fares from 1.485 to 1.98 cents per mile. This group of carriers operated an average of 2,134 miles of road in passenger service in 1942, which was approximately 65 per cent of all the passenger [fol. 2236] mileage of the Class I railroads. Under the suspended schedules both the one-way and round-trip coach fares of these roads would be increased 33⅓ per cent.

Appendix A further shows that the Illinois Central Railroad and the Gulf, Mobile and Ohio Railroad, hereinafter called I. C. and G. M. & O., operated 607 miles of road in passenger service in 1942, or about 18 per cent of the total. These roads now have a fare of 2.2 cents per mile one-way but under the suspended schedules their round-trip fares would be increased from 1.65 to 1.98 per mile, or 20 per cent.

The C. & O. operated 247 miles of road in passenger service on its Big Sandy line in 1942, or about 8 per cent of the state's total. On this line it maintains a one-way fare of 1.65 cents and a round-trip fare of 1.25 cents per mile. These are so-called motor competitive fares and carry an expiration date but they have been continued in effect for several years. Since the hearing the expiration date has been extended from June 30 to December 31, 1943.

The Catlettsburg to Covington and the Ashland to Winchester lines of the C. & O., together with the Norfolk and Western Railway and Tennessee Central Railway, hereinafter called N. & W. and Tenn. Cent., operated 279 miles in passenger service in 1942, or about 9 per cent of the total. This group now charges 2.2 cents for both one-way and round-trip fares and no changes are proposed herein.

All of the fares mentioned above, and those named hereinafter, unless otherwise specified, include the 10 per cent increase, which became effective February 10, 1942 pursuant to orders of the Interstate Commerce Commission in Ex Parte 148, 248 ICC 545, and the corresponding order of the Kentucky Commission in Docket No. 639, but do not include the federal tax of 10 per cent.

Specific illustrations of the proposed increases between representative points in Kentucky will be found in Appendix B hereto. The information shown in the appendices has been compiled from the exhibits of record and from the tariffs of respondents on file with our commission.

The increases proposed in the first class fares, good in sleeping and parlor cars, are relatively minor. Certain of the carriers maintain a round-trip first-class fare of 2.475 cents per mile good for 30 days and 2.75 cents per mile good for six months. Under the suspended schedules a uniform round-trip fare of 2.75 cents per mile would be applicable for three months. Stated differently, the present 30-day round-trip fare would be increased approximately 10 per cent, without any change in the round-trip fare for six months, except that the time limit would be reduced to three months. The one-way first class fares are now 3.3 cents per mile on all railroads, and no changes therein are proposed in the suspended schedules.

[fol. 2237] Position of Parties

The burden of justifying the increases proposed herein was assumed by representatives of the Southern Railway System who announced that their testimony and evidence was presented on behalf of all of the respondents. Counsel for the L. & N. assisted counsel for the Southern in presenting respondents' case. The Federal Price Administrator and Federal Director of Economic Stabilization were represented by counsel who participated in the examination of witnesses and presented an oral argument in opposition to the proposed increases but offered no direct evidence. A similar position was taken by Mr. Henry M. Johnson on behalf of himself and other train riders. The Commonwealth was represented by Hon. M. B. Holifield, Assistant Attorney General.

Since a suspension proceeding is in the nature of a general investigation our traffic adviser submitted an exhibit showing various passenger traffic data of Kentucky railroads compiled from respondents' annual reports to our commission for the years 1935 to 1942, inclusive.

The various exhibits and testimony in support thereof will be discussed herein under appropriate headings.

History of Interstate Passenger Fares

In *Passenger Fares and Surcharges*, 214 ICC 174 (decided February 28, 1936) the Interstate Commerce Commission conducted a general investigation on its own motion of all interstate passenger fares and charges throughout

the United States. At page 186 of the report therein the commission said

> "The basic fare prior to the war was not uniform throughout the country but averaged about 2.5 cents. Beginning in 1918, with few exceptions, it became uniform at 3 cents, and in 1920, following Increased Rates, 1920, 58 ICC 220, it was increased to 3.6 cents."

The report in the above styled case further shows that at the time the investigation was concluded in 1935 most of the railroads operating in the eastern district were charging the basic fare of 3.6 cents per mile, whereas most of the southern railroads and western railroads were charging only 1.5 cents and 2 cents, respectively, for coach fares, and something less than the basic fare in parlor and sleeping cars. These voluntary reductions by the southern and western railroads were designed to meet competition of motor traffic.

Notwithstanding the fact that the railroads generally were losing money on their passenger traffic the ICC in *Passenger Fares and Surcharges, supra,* ordered the basic fare of 3.6 cents reduced to 2 cents per mile in coaches, and 3 cents per mile in parlor and sleeping cars, and also ordered the elimination of the surcharge then applicable [fol. 2238] on parlor and sleeping car traffic. In reaching these conclusions the commission commented on the fact that the value of the service, as well as the cost of the service, is an important factor in judging the reasonableness of the fare structure. In support thereof it quoted at page 233 from *Smythe* v. *Ames,* 169 U. S. 466, 547, as follows:

> "What the company is entitled to ask is a fair return upon the value of that which it employs for the public convenience. On the other hand, what the public is entitled to demand is that no more be exacted from it for the use of the public highway than the services rendered by it are reasonably worth."

The 2-cent basic coach fare thus prescribed by the ICC in 1936 is still in effect, except that it has been increased 10 per cent for the duration of the war and six months thereafter, under *Ex Parte 148, supra.* The decision in *Passenger Fares and Surcharges, supra,* required substantial re-

ductions in fares in the eastern district but most of the coach fares in the south and west were not affected by the orders therein because they were already 2 cents or lower.

Shortly after the decision in *Passenger Fares and Surcharges, supra,* that is, on November 15, 1937, the southern railroads increased their fares from 1.5 to 2 cents. The 2-cent fare remained in effect for 14 months, or until January 15, 1939, when it was again voluntarily reduced to 1.5 cents. On February 10, 1942 the southern railroads increased their state and interstate fares to 1.65 cents to correspond with the 10 per cent increase in *Ex Parte 148.* On October 1, 1942 the southern railroads further increased their interstate fares from 1.65 cents to 2.2 cents, which is the basic fare approved by the ICC in 1936, as modified by the 10 per cent increase of February 10, 1942. This increase of October 1, 1942, was protested by the Office of Price Administration but the ICC declined to suspend the schedules.

At present it appears that the interstate coach fares throughout the United States are on basis of 2.2 cents, although certain railroads have somewhat lower round-trip fares. In the south the round-trip fares are 10 per cent less than the one-way fares.

Kentucky Intrastate Fares

Generally speaking, the Kentucky intrastate fares have been maintained on the same basis as the corresponding interstate fares. The C. & O., an eastern railroad, has generally followed the eastern basis. The I. C., which operates both in the west and the south, has generally followed the western basis. The G. M. & O. is parallel to the I. C., and has generally followed the fares of the I. C. The L. & N., N. C. & St. L. and Southern Systems have generally followed the southern railroads in the matter of passenger fares.

[fol. 2239] Just prior to the decision in *Passenger Fares and Surcharges, supra,* the C. & O. charged 3.6 cents, the I. C. and G. M. & O. 2 cents, and the L. & N., N. C. & St. L. and Southern Systems 1.5 cents within the state. Following the decision in *Passenger Fares and Surcharges, supra,* and also following the increase by the L. & N., N. C. & St. L. and Southern Systems, that is, early in 1938, all of the fares were on basis of 2 cents.

When the L. & N., N. C. & St. L. and Southern Systems again voluntarily reduced their fares to 1.5 cents on January 15, 1939, our commission in Docket No. 605 directed the I. C., G. M. & O. and C. & O. to show cause why their fares should not be reduced to the level maintained by the L. & N., N. C. & St. L. and Southern Systems. In support of its position the C. & O. showed that it was maintaining the 1.5 cent basis on its lines west of Winchester and south of Catlettsburg and that the fares on its other lines in Kentucky were being restored to the 2-cent basis after having been 2.5 cents for a period of 18 months under a supplemental decision in *Passenger Fares and Surcharges, supra.* It also contended that its coach service in Kentucky is superior to that of other lines. During the course of the investigation the I. C. and G. M. & O. voluntarily reduced their round trip fares to 1.5 cents. In the light of these concessions, and upon motion of the respondents, the proceeding was dismissed.

Growth of Passenger Traffic and Revenues

Passenger traffic and the revenues therefrom within the state of Kentucky, as well as in the nation as a whole, have increased tremendously within the past two or three years. This is particularly true of 1942 over 1941 and there is reason to believe that 1943 will show a further increase over 1942. The data submitted by our own witness is summarized in Appendix C hereto. Passenger revenues earned by the L. & N., I. C., C. & O., C. N. O. & T. P. and Southern on their state and interstate traffic in Kentucky were $4,182,411 in 1939, $6,497,525 in 1941, and $14,023,436 in 1942.

Passengers carried by the same railroads in Kentucky were 2,831,439 in 1938, 3,931,378 in 1941, and 6,633,604 in 1942. Passenger miles increased from approximately 208 million in 1938, to 370 million in 1941, and 724 million in 1942. The average number of passengers per car-mile (coach, parlor and sleeping cars) was 9.1 in 1938, 13.8 in 1941, and 22.3 in 1942. The average miles traveled per passenger has consistently increased from 66.1 in 1935 to 109.1 in 1942.

Effect of Proposed Fares on Respondents' Revenues and Earnings

The record does not definitely show the extent to which respondents' revenues and earnings would be increased by [fol. 2240] the suspended fares but certain estimates may be made from the exhibits presented at the hearing. In 1942 the L. & N.'s revenues from intrastate passenger traffic amounted to $967,966. This included revenues from parlor and sleeping car traffic on which the proposed increases are small, and also from members of the armed forces traveling on furlough, for which no increases are herein proposed. On long haul over-night traffic the record indicates that respondents' revenues from parlor and sleeping car services are substantially as great as from coach services, due largely to the higher fares per mile. It is well known, however, that on short haul intrastate traffic parlor and sleeping car services are not used to any appreciable extent. Furthermore, on many of its lines in Kentucky the L. & N. does not even maintain such services.

While the proportion of traffic by the armed forces has greatly increased, it may be assumed that a very considerable portion of such travel is for the federal government and therefore subject to the same increases as proposed for the public. Some mention was made of land grant rates and fares which are but 50 per cent of the commercial rates and fares. There was no showing, however, that any of the railroads in Kentucky are subject to land grant reductions.

From all of the above we estimate that under the suspended schedules approximately $750,000 of the L. & N.'s 1942 passenger revenues would be subject to an increase of 33⅓ per cent, and that such increase would amount to $250,000 per year. For the other respondents, namely C. & O. (west of Winchester), C. N. O. & T. P., G. M. & O., I. C., N. C. & St. L. and Southern, we estimate that the increased revenues resulting from the increased fares would be $150,000. In arriving at this estimate we have taken into consideration the shorter mileages of these carriers and also the smaller increases proposed by the I. C. and G. M. & O. Our estimate of the total increase in revenues from the proposed coach fares is therefore $400,000 per annum, which may be either too high or too low, depending upon the volume of future passenger traffic.

In order to arrive at the cost of the proposed increases to the public it is necessary to add the federal transportation tax of 10 per cent. This tax would amount to $40,000 and makes the total $440,000 per annum.

It is obvious, however, that the estimated increase in revenues of respondents will not mean a corresponding increase in their net earnings because a very large part of these increases would have to be paid over to the federal and state governments for income and excess profits taxes. Since these increases are to be added to earnings which are already quite high they would fall into the upper brackets and be subject to very high income and excess profit rates, [fol. 2241] There is some testimony in the record which indicates that as much as 80 per cent of the increases would have to be paid out by respondents for such taxes. If this be true then respondents would receive as net revenues approximately $80,000, and the remainder of $360,000 would be paid for taxes, principally to the federal government.

Respondents' Justification of Proposed Increases

Respondents rely largely upon the fact that the suspended basic coach fare of 2.2 cents and the basic sleeping and parlor car fare of 3.3 cents per mile are the same as approved by the ICC for interstate traffic and now in effect on such traffic throughout the nation. They also show that these basic fares are applicable on intrastate traffic in northern and western states.

Within the past few months these fares have been approved by the appropriate state commissions for intrastate application in Florida, Louisiana, Mississippi, South Carolina and Virginia. At the time of our hearing only one state, Alabama, had declined to approve them. In three other states, namely, Georgia, North Carolina and Tennessee, hearings had not been held or decisions had not been handed down.

Respondents contend that the maintenance of intrastate fares within the state of Kentucky on a lower basis than the interstate fares applicable from and to points just beyond the borders of the state constitutes unlawful discriminations against interstate traffic. They further contend that numerous interstate fares can be, and doubtless are being defeated by passengers purchasing tickets to destinations near the border at the lower intrastate fares, and then

purchasing additional tickets at such points for the remainder of the trips at the interstate fares.

It is well established that interstate rates may not lawfully be reduced by a combination of interstate and intrastate rates. *Baltimore and Ohio R. R.* v. *Settle* 260 U. S. 166, 67 L. Ed. 189. This principle of law applies with equal force to passenger fares but as a practical matter it might be more difficult for the carriers to conform to the law with respect to such fares.

Respondents further contended that their costs of maintaining passenger traffic have been greatly increased since the beginning of the war period. They cite particularly the extra costs resulting from ths expediting of troop trains and shipments of war materials. Their operating representatives testified that they are leaving no stone unturned to render the best service possible to the government and to the public irrespective of the extra costs which they are now being called upon to bear.

Because of these extra costs and also because of increased taxes it is claimed that the increased revenues which they [fol. 2242] have received from the greatly increased passenger traffic have not been converted into corresponding net earnings. The record shows, however, that the principal respondents herein, namely, C. N. O. & T. P., I. C., L. & N., N. C. & St. L. and Southern, enjoyed substantial net operating revenues on their 1942 passenger traffic, both state and interstate, whereas these same respondents in the six years prior to 1942 incurred deficits on such traffic.

Conclusions and Findings

Respondents herein, together with most of the other railroads of the nation, undoubtedly have made a notable contribution to the war effort by the services which they have rendered under the trying and difficult situations now confronting them. For the services they have contributed thus far and doubtless will continue to perform in the future, they are entitled to the commendation of all. If the increased revenues sought herein were vitally essential to the continuation of these efforts we would in all likelihood approve the proposed increases, just as we granted an increase of 10 per cent in respondents' fares in February 1942 under Docket 639, when it appeared that they were in urgent need of additional revenues. The record shows, however, that

by reason of the tremendous increases in freight and passenger traffic respondents' gross and net revenues are now on an exceedingly high level.

In passing upon the questions presented herein there are other factors which demand our most careful consideration. Not the least of these is the efforts of our federal government to stabilize our economic structure. As recently as April 8, 1943 our President issued Executive Order 9328, Paragraph 4, of which reads as follows:

> "The attention of all agencies of the Federal Government, and of all State and municipal authorities, concerned with the rates of common carriers or other public utilities, is directed to the stabilization program of which this order is a part so that rate increases will be disapproved and rate reductions effected, consistently with the Act of October 2, 1942, and other applicable federal, state or municipal law, in order to keep down the cost of living and effectuate the purposes of the stabilization program."

The Act of October 2, 1942 referred to above and its accompanying Executive Order No. 9250, effective October 3, 1942, related to the stabilization of prices, wages, and salaries. With respect to the stabilization program Hon. Joseph B. Eastman, Director, Office of Defense Transportation, and member of the Interstate Commerce Commission, in his concurring opinion in Ex Parte 148, Report on Further Hearing, decided April 6, 1943, made the following significant statement (Sheets 40 and 41 of mimeographed report):

> [fol. 2243] "The great areas of danger, in the endeavor to prevent inflation, are to be found, I fear, in farm prices and in the wages paid to workers. It is in those places that the fabric of prevention is most likely to be torn and an unravelling process begin. In safeguarding against these dangers, we cannot wisely leave out of consideration emotional and other psychological reactions. So long as the railroad industry, or any other great industry, is in war time making very large profits and such profits are in part dependent upon rates or price increases authorized since the war began, a situation exists which is more than likely to generate perilous reactions, whether real or purported,

> of this character. If, as here, the basis for such reactions can be removed without injustice or serious financial detriment to the railroads, I am fully persuaded that it should be removed."

In the same opinion on Sheet 41 of the mimeographed report, Mr. Eastman had the following to say concerning the taxes of railroads arising out of increased rates and fares:

> "The matter has another aspect, not so fundamental but yet of importance. A considerable number of the railroads are now paying in large amounts, not only income taxes, but also excess profits taxes. Public utility corporations are surely inappropriate mediums for collecting taxes of this character from the public which they serve. The fact that such taxes are collectible is always an incentive, also, to improvident or unnecessary spending."

In the present proceeding a representative of the Price Administrator and the Director of Economic Stabilization, both of which are arms of the federal government, protested against the proposed increases on the ground that they will have a disturbing effect upon the stablization program. Since a very large proportion of the increases would be paid over to the federal government in the form of taxes, the views of these agencies of the government are entitled to serious consideration.

Our Kentucky Statutes provide that "At any hearing involving a rate increased or sought to be increased, the burden of proof to show that the increased or proposed increased rate is just and reasonable shall be upon the carrier." KRS 276.170 (201g-7). Our consideration of the evidence herein leads to the conclusion that respondents have not sustained the burden thus cast upon them. Their exhibits and testimony in support thereof relate principally to their entire operations both within and without Kentucky and includes the operation of several carriers, both large and small, which reach Kentucky but which have no intrastate passenger operations within the state. For example, [fol. 2244] the evidence includes data of the Baltimore and Ohio, Chicago, Indianapolis and Louisville, New York Central, and Pennsylvania, which reach only one Kentucky city, Louisville, and the Clinchfield which serves only Elkhorn

City. The N. & W. has only 5 miles of passenger operations in Kentucky and the fares of this road are not involved herein.

Only a small amount of evidence was offered with respect to the Kentucky operations of the respondents most vitally affected by the proposed changes in fares and charges. Although respondents undertook to show that over a period of years, that is from 1936 to 1942, inclusive, they had incurred an operating deficit from their passenger operations, they submitted no detailed figures to show how these alleged deficits were computed. In addition to passengers respondents transport on their passenger trains certain commodities, including mail, express, baggage, milk and cream. For aught that appeared of record their deficits, if any, may have been due to insufficient rates charged on such commodities.

All this evidence was available to respondents and could have been presented by them at the hearing. In *Interstate Circuit, Inc.*, v. *United States*, 306 U. S. 208, 226, the Supreme Court said:

> "The production of weak evidence when strong is available can lead only to the conclusion that the strong would have been adverse."

Prior to February 10, 1942 the L. & N., N. C. & St. L. and Southern Railway Systems had maintained their one-way fares within the state on basis of 1.5 cents per mile for approximately seven out of the preceding eight years. The maintenance of such fare during a period when passenger traffic was generally light creates a presumption that the present fare of 1.65 cents during a period of peak passenger traffic is not unreasonably low.

In reaching our conclusions herein we are not unmindful of the recent decision of the ICC in Ex Parte 148, on further hearing, wherein it was held that the 10 per cent increase on passenger fares, which became effective February 10, 1942, should not be eliminated. This point was stressed quite strongly by respondents at the hearing in support of their proposals here. The question before the ICC in that proceeding was whether the fares in effect when the stabilization program was created should be *reduced*, whereas here the question is whether fares existing at the time this program became effective should be *increased*. It is true that the ICC permitted increases in the southern interstate fares to become effective without suspension

on October 1, 1942 but that was prior to the passage of the Stabilization Act of October 2, 1942.

[fol. 2245] As previously shown, the increases in parlor and sleeping car fares herein proposed would not result in any appreciable increase in respondents' revenues. Furthermore, protestants raised no particular objections to these increases. Since these increases would place the intrastate parlor and sleeping car fares on the interstate level we conclude that they should be approved.

While the uniformity sought herein between the interstate and intrastate fares is desirable, uniformity alone is not a sufficient justification for the substantial increases proposed in the coach fares. The Interstate Commerce Commission has frequently held that an intrastate rate structure different from that of the adjacent interstate structure is not unlawful. *Intrastate Class and Commodity Rates in Kentucky*, 223 ICC 109, and cases cited therein.

For the reasons set forth herein we find:

1. That the suspended schedules, in so far as they propose increases in the coach fares within the state of Kentucky, have not been shown to be just and reasonable.

2. That the suspended schedules, in so far as they propose changes in the parlor and sleeping car fares, are just and reasonable.

An appropriate order will be entered.

Order

It appearing that by order dated November 23, 1942, the commission entered upon a hearing concerning the lawfulness of increased passenger fares and charges stated in the schedules described in said order, and suspended the operation of said schedules until June 28, 1943:

It further appearing that a full investigation of the matters and things involved has been made and that the commission on the date hereof, has made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof:

It is ordered that the respondents herein be and they are hereby notified and required to cancel said schedules, in so far as they have been found not justified, on or before

June 28, 1943, upon notice to this commission and to the general public by not less than five days' filing and posting in the manner prescribed in our rules of practice and that this proceeding be discontinued.

Frank L. McCarthy, Chairman, Jack E. Fisher, Commissioner, Mrs. John W. Langley, Commissioner.

Attest: Lucile Tobin, Secretary.

[fol. 2246]

APPENDIX A

Present and Suspended Kentucky Intrastate Coach Fares of Class I Railroads, in cents per mile

(Federal tax of 10 per cent not included)

Railroad	Miles of Road Operated in Passenger Service—1942	One-way Fares		Round-trip Fares	
		Present (cents)	Suspended (cents)	Present (cents)	Suspended (cents)
Group 1					
L. & N. R. R.	1,674	1.65	2.2	1.485	1.98
C.N.O. & T.P.Ry.	198	1.65	2.2	1.485	1.98
Sou. Ry.	98	1.65	2.2	1.485	1.98
N.C. & St.L.Ry.	60	1.65	2.2	1.485	1.98
C. & O. (1)	104	1.65	2.2	1.485	1.98
Total—Group 1	2,134	1.65	2.2	1.485	1.98
Group 2					
I. C. R. R.	564	2.2	NC	1.65	1.98
G. M. & O. Ry.	43	2.2	NC	1.65	1.98
Total—Group 2	607	2.2	NC	1.65	1.98
Group 3					
C. & O. Ry. (2)	247	1.65	NC	1.25	NC
Group 4					
C. & O. Ry. (3)	256	2.2	NC	2.2	NC
N. & W. Ry.	5	2.2	NC	2.2	NC
Tenn. Cent. Ry.	18	2.2	NC	2.2	NC
Total—Group 4	279	2.2	NC	2.2	NC
Grand Total	3,267				

NC—No change in fares proposed.

(1)—Winchester to Louisville, inclusive.
(2)—Big Sandy Line—Catlettsburg and South.
(3)—Catlettsburg to Covington and Ashland to Winchester, inclusive.

[fol. 2247]

Appendix B

Present and Suspended Kentucky Intrastate Coach Fares between Representative Points

(Federal tax of 10 per cent not included)

Between	And	Railroad	One-way		Round-trip	
			Present	Suspended	Present	Suspended
Louisville	Elizabethtown	L & N	$ .72	$ .95	$1.30	$1.75
Louisville	Bowling Green	L & N	1.95	2.53	3.55	4.60
Louisville	Shelbyville	*L & N	.61	.77	1.10	1.40
Louisville	Frankfort	*L & N	.99	$1.32	1.80	2.40
Louisville	Lexington	*L & N	1.45	1.87	2.65	3.40
Lexington	Jackson	L & N	1.55	2.27	2.80	4.10
Lexington	Hazard	L & N	2.30	3.23	4.15	5.85
Lexington	Richmond	L & N	.66	.84	1.20	1.55
Lexington	Corbin	L & N	1.80	2.35	3.25	4.25
Lexington	Harlan	L & N	3.10	4.03	5.60	7.30
Louisville	Lawrenceburg	Sou. Ry.	1.10	1.39	2.00	2.55
Louisville	Harrodsburg	Sou. Ry.	1.45	1.87	2.65	3.40
Louisville	Danville	Sou. Ry.	1.60	2.05	2.90	3.70
Lexington	Williamstown	CNO & TP	.77	.95	1.40	1.75
Lexington	Danville	CNO & TP	.66	.81	1.20	1.50
Lexington	Somerset	CNO & TP	1.30	1.76	2.35	3.20
Lexington	Stearns	CNO & TP	1.85	2.46	3.35	4.45
Louisville	Greenville	I C	2.97	NC	4.46	5.35
Louisville	Dawson Springs	I C	3.69	NC	5.50	6.65
Louisville	Paducah	I C	5.01	NC	7.48	9.05
Louisville	Mayfield	I C	5.50	NC	8.25	9.90
Winchester	Lexington	†C & O	.33	.44	.60	.80
Winchester	Frankfort	†C & O	.83	1.06	1.55	2.15
Winchester	Louisville	†C & O	1.75	2.27	3.15	4.10

NC—No change.

* Applies also on C. & O. trains. † Applies also on L. & N. trains.

[fols. 2248–2278] Appendix C

Statistics of Kentucky Intrastate and Interstate Operations of the Five Principal Class I Railroads within the State, namely, L. & N., I. C., C. & O., C. N. O. & T. P. and Southern Railway, for the years shown.

Year	Column I Passenger Revenues	Column II Passengers Carried	Column III Passenger Miles (Thousands)	Column IV Passenger *Car-miles (Thousands)	Column V Average Passengers *Per car-mile
1935	$3,952,422	3,338,589	220,720	25,302	8.7
1936	4,724,256	3,801,320	265,370	23,695	11.2
1937	5,086,532	3,923,151	279,255	24,181	11.5
1938	4,318,238	2,831,439	208,349	22,903	9.1
1939	4,182,411	2,925,089	230,594	22,885	10.8
1940	4,493,479	3,065,609	256,054	24,165	10.6
1941	6,497,525	3,931,378	369,508	26,868	13.8
1942	14,023,436	6,633,604	723,909	32,417	22.3

APPENDIX C—Continued

Year	Column VI Average Miles per Passenger (Col. III ÷ II)	Column VII Average Revenue per Mile (Col. I ÷ II) (Cents)	Column VIII Average Revenue per Passenger (Col. I ÷ II)	Column IX L. & N. R.R. Intrastate Passenger Revenues
1935	66.1	1.790	$1.18	.....
1936	69.8	1.780	1.24	$733,479
1937	71.2	1.821	1.30	713,672
1938	73.6	2.073	1.52	562,348
1939	78.8	1.814	1.43	519,726
1940	83.3	1.755	1.47	499,074
1941	94.0	1.758	1.65	538,046
1942	109.1	1.937	2.11	967,966

* Includes coaches, sleeping and parlor cars.

[fol. 2279] EXHIBIT "E" TO PETITION

Interstate Commerce Commission

No. 29000

Kentucky Intrastate Fares

Submitted Decided

Passenger fares and charges required by State authority to be maintained by respondents within the State of Kentucky found not shown to be unduly prejudicial to persons or places in interstate commerce, and found not unjustly discriminatory against interstate or foreign commerce. Proceeding discontinued.

L. L. Oliver, Edward D. Mohr, and *James B. Gray,* for respondents.

Hubert Meredith and *M. B. Holifield,* for Commonwealth of Kentucky; *Frank L. McCarthy, Jack E. Fisher, Mrs. John W. Langley,* and *J. L. Marks* for Railroad Commission of Kentucky; and *M. D. Miller, George J. Burke, David F. Cavers,* and *Warren Price, Jr.,* for Acting Price Administrator and Director of Economic Stabilization, protestants.

Henry M. Johnson, protestant.

Report Proposed by Examiner C. E. Stiles

This is an investigation instituted upon a petition filed by rail carriers operating in Kentucky to determine whether the refusal of the Railroad Commission of Kentucky to

authorize or permit the application to the transportation of passengers traveling intrastate in Kentucky of coach fares and charges corresponding to those established for interstate application on October 1, 1942, causes any undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce, on the one hand, and interstate or foreign commerce, on the other hand, or any undue, unreasonable, or unjust discrimination against interstate or foreign commerce; and to determine what fares and charges, if any, or what maximum or minimum or maximum and minimum fares and charges, shall be prescribed to remove such advantage, preference, prejudice, or discrimination, if any, as may be found to exist. All common carriers by railroad operating within Kentucky subject to the jurisdiction of this Commission were made respondents, and the State of Kentucky was notified of this proceeding.

Rate History:—In Southern Passenger Association Territory, which generally speaking is that territory east of the Mississippi and south of the Ohio and Potomac Rivers, [fol. 2280] from June 15, 1914, to June 9, 1918, the basis of one-way coach fares was generally 2.5 cents per mile. On June 10, 1918, under an order of the Director General of Railroads, the fare was increased to 3 cents per mile. This fare remained in effect until August 25, 1920. From August 26, 1920, to November 30, 1933, the fare generally was 3.6 cents per mile. (7)

During 1932 and 1933 certain of the carriers operating in Southern Passenger Association territory experimented with fares lower than 3.6 cents in attempts to attract additional passenger business in competition with transportation by private automobiles and busses. For example from April 1 to November 30, 1933, experimental one-way fares of 2 cents per mile in coaches, were maintained by the Mobile and Ohio Railroad Company (now part of the Gulf, Mobile and Ohio Railroad Company), Louisville and Nashville Railroad Company, and The Nashville, Chattanooga & St. Louis Railway. During the same period the Southern Railway System lines were experimenting with coach fares of 1.5 cents per mile on certain portions of their lines. (8)

On December 1, 1933, most lines in Southern Passenger Association territory established experimental fares of 1.5 cents per mile in coaches, which remained in effect through

November 14, 1937. However, a number of railroads kept their one-way coach fares at 2 cents per mile during this period, but met the 1.5-cent fares maintained by other roads where competition made that necessary. Among the lines which retained the 2-cent coach fare during this period were the Illinois Central Railroad Company, Mobile & Ohio, and the St. Louis-San Francisco Railway Company (J. M. Kurn and Frank A. Thompson, Trustees). The Chesapeake and Ohio Railway Company retained the 3.6-cent fare, (except that on its line between Louisville, Ky., and Winchester, Ky., it met the competitive fare of 1.5 cents) until June 1, 1936 on which date it was reduced to 2 cents. (8, 9)

In *Passenger Fares and Surcharges*, 214 I. C. C. 174, decided February 28, 1936, the Commission reviewed railroad passenger fares throughout the nation, and found the basic fares to be unreasonable. It prescribed maximum reasonable fares of 2 cents per mile, one way and round trip, in coaches, without prejudice to the maintenance of lower fares. The existing experimental fares in the South were found not unreasonable or otherwise unlawful. (16)

On November 15, 1937, the carriers that were maintaining the experimental coach fare of 1.5 cents increased the fare to 2 cents per mile, but restored the 1.5-cent fare on January 15, 1939. (16) Again, certain of the southern lines, including the Illinois Central, Mobile & Ohio, and St. Louis-San Francisco, retained the 2-cent fare basis, except in certain instances where it was necessary to meet the competitive fares. The Chesapeake & Ohio, however, on August 25, [fol. 2281] 1938, increased its fares to 2.5 cents per mile, but on its Louisville-Winchester line met the competitive fare of 2 cents from August 25, 1938, to January 14, 1939, inclusive. On January 25, 1939, this respondent reduced its basic fare to 2 cents per mile. From January 15, 1939, to February 9, 1942, it maintained a fare of 1.5 cents per mile on its Louisville-Winchester line. (9, 16)

By its order of January 21, 1942, in Ex Parte No. 148, this Commission found that a nation-wide increase of 10 per cent in fares proposed by the railroads was necessary to enable the petitioners to continue to render adequate and efficient transportation service during the national emergency, and that the proposed increased fares would be reasonable and lawful. See *Increased Railway Rates, Fares, and Charges, 1942*, 248 I. C. C. 545, 565, 566, where the foregoing findings were renewed and affirmed. (16, 17)

The reestablished coach fares of 1.5 cents remained in effect until February 10, 1942; on which date the 10 per cent increase in fares became effective. On that date fares of 1.5 cents became 1.65 cents, and fares of 2 cents became 2.2 cents. The Railroad Commission of Kentucky likewise approved an increase of 10 per cent on intrastate fares. (9, 10, 16)

Substantially all the carriers operating in Southern Passenger Association territory, including the respondents herein, during the summer of 1942 petitioned this Commission for authority to increase all lower fares for interstate one-way transportation in coaches to 2.2 cents per mile, thereby seeking to bring these fares up to the level prevailing generally throughout the rest of the United States. The authority sought was granted by order of August 1, 1942, modifying the original order in Ex Parte No. 148. Pursuant to this authority the lower fares were increased on October 1, 1942, to 2.2 cents. The fares as so increased are now in effect for interstate travel. (10, 11)

Effective October 1, 1942, respondents, and railroads generally throughout the country, established a uniform basis of interstate round-trip fares to displace the round-trip fares constructed on various basic rates and with varied return limits which had previously been in effect. The round-trip coach fares so established are 180 per cent of the one-way coach fares of 2.2 cents, or 1.98 cents per mile, with a return limit of 3 months. (30, 31)

On or about October 1, 1942, upon request of the Government, the carriers established for both interstate and intrastate travel reduced round-trip coach fares on the basis of 1.25 cents per mile, available only to personnel of the Army, Navy, Marine Corps, Coast Guard, Women's Naval Reserves, Women's Army Auxiliary Corps, Women's Coast Guard Reserves, and Women's Marine Corps Reserves, [fol. 2282] traveling in uniform and at their own expense when on official leave, furlough, or pass; also to nurses, when not traveling in uniform, upon presentation of proper identification, and to personnel of the military forces of the allied nations. Respondents do not propose to increase this fare. (29, 30)

Following establishment of the interstate one-way coach fares of 2.2 cents on October 1, 1942, the southern carriers undertook to place all their intrastate fares to the inter-

state bases. Increases in the intrastate fares have been approved and are now in effect in Florida, Louisiana, Mississippi, South Carolina, and Virginia; and since the hearing herein favorable action on the carriers' application has been taken in Georgia. Adverse decisions on the proposed increases in coach fares have been rendered by the regulatory bodies in Alabama, North Carolina, and Tennessee. (14, 15)

The Kentucky intrastate one-way fares of respondents were on October 1, 1942, and still are 1.65 cents in coaches, except that the Gulf, Mobile & Ohio and Illinois Central maintain coach fares of 2.2 cents other than in instances where they meet the 1.65-cent fare of competing lines, and the Chesapeake & Ohio maintains a fare of 2.2 cents except on its Louisville-Winchester line. (12) Respondents herein filed with the Railroad Commission of Kentucky tariffs to become effective December 1 to increase the basic one-way coach fare to 2.2 cents, making it uniform with that applicable for interstate travel, and to make effective intrastate the round-trip fares which had been established uniformly for interstate application on October 1. This proposal included cancellation of the 15-day limit round-trip coach fares on the basis of 1.485 cents per mile and the 60-day limit round-trip coach fares on the basis of 1.65 cents per mile, and substitution therefor of the 3-months limit round-trip fares on the basis of 1.98 cents per mile. The Railroad Commission of Kentucky suspended operation of the tariffs, and after a hearing, issued its report and order on May 31, 1943, denying respondents' proposal to make such one-way and round-trip coach fares and charges effective on intrastate passenger traffic in Kentucky, but approving proposed changes in round-trip fares for transportation in parlor and sleeping cars. (12, 13, 30, 31) Respondents thereupon filed with this Commission the petition upon which this investigation was instituted. After due notice to the State of Kentucky a hearing has been held. The issues are whether the fares, charges, regulations or practices imposed by authority of the State of Kentucky cause (1) any undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce on the one hand and interstate or foreign commerce on the other hand; or (2) any undue, unreasonable or unjust discrimination against interstate or foreign commerce.

[fol. 2283] (I. C. Act sec. 13(4)) Under the first issue the question is one of the relation between the intrastate and the interstate fares, charges, regulations and practices; and under the second issue the question is one of the effect of the fares and charges upon income from intrastate traffic in the relation of the latter to railroad income as a whole. *Florida* v. *United States*, 282 U. S. 194; *Wisconsin Railroad Comm.* v. *Chicago, B. & Q. R. Co.*, 257 U. S. 563.

Reasonableness of the Interstate Fares.—As a basis for a finding of violation of section 13(4), the interstate fares must be shown to be reasonable. *Georgia Public Service Comm.* v. *United States*, 283 U. S. 765; *Increases in Louisiana Freight Rates and Charges*, 229 I. C. C. 521, 524.

Comparing the interstate one-way coach fare of 2.2 cents with basic fares in effect at various times it will be seen that the fares in effect from June 15, 1914, to June 9, 1918, were 13.6 per cent higher than the present fares; those in effect June 10, 1918 to August 25, 1920, were 36.3 per cent higher; and those in effect August 26, 1920, to November 30, 1933, were 63.6 per cent higher. (10) The 1.5-cent fare maintained from December 1, 1933, to November 14, 1937, and from January 15, 1939, to February 9, 1942, was a subnormal fare maintained primarily to attract traffic that had been diverted to private automobiles. (8)

When in *Passenger Fares and Surcharges*, *supra*, the Commission in 1936 reduced the basic interstate coach fares throughout the nation from 3.6 to 2 cents, it gave consideration to the element of what the traffic will bear in the light of the competition from private automobiles (page 231), and in its summary of fact findings said (page 255):

> 9. Changed economic conditions, including reduced commodity prices and average income, together with the generally cheaper cost and greater convenience of travel by highway, have so affected the value of the rail passenger service to the public that a fare basis which was reasonable maximum before severe highway competition, and especially before the fall in recent years in commodity prices and average income, is out of harmony with present-day conditions.

As respondents point out, economic conditions since then have greatly changed, and the railroads today, instead of trying to attract passenger traffic, are endeavoring to dis-

courage unnecessary travel, and are cooperating with the Office of Defense Transportation in its effort to avoid the rationing of passenger travel. As hereinabove mentioned, in its order of January 21, 1942, the Commission found that the increased fares would be reasonable, and affirmed that finding in its report of March 2, 1942. In its report on further hearing, 255 I. C. C. 357, decided April 6, 1943, wherein [fol. 2284] the Commission suspended the operation of the increases that had been authorized on freight rates, it declined to suspend their operation on passenger fares (see pages 394, 395).

Other evidence of record shows the increased value of passenger transportation by reason of increased service rendered in connection therewith. Railroads operating in the South have spent large sums of money in remodeling and air-conditioning their equipment. The Southern Railway System lines in the past decade have air-conditioned or purchased new with air-conditioning facilities 189 coaches; have remodeled many coaches to provide additional space for retiring and smoking rooms, and in doing so reduced the seating capacity from 15 to 20 per cent; and have equipped 14 coaches with reclining chairs and in so doing reduced the seating capacity from 80 to 46 persons. (27, 28)

The increase in passenger traffic has resulted in increased operating expenses in several respects: Ticket selling, accounting, and general office forces have had to be greatly increased, and offices kept open longer hours, and this has also added to light and fuel bills; many trains have had to carry additional cars necessitating either the use of a second locomotive or the running of the train in two sections, the latter calling for the use of two full train crews; additional train employees to assist in loading and unloading passengers have been employed; additional mechanical forces have been employed in the car inspection and repair shops; car-cleaning, train-dispatching, and telegraphic forces have been greatly increased; engine-house expense has increased by reason of the use of a larger number of engines; and terminal switching costs have increased by reason of yard congestion. On Southern Railway System lines 631 regular trains were operated in two sections during June and July 1943. On the Cincinnati, New Orleans & Texas Pacific division of the Southern 4 extra sections are operated daily. (27, 74-79)

The transportation of members of the armed forces of the United States has constituted a material added burden upon the passenger departments and facilities of the railroads in the South. For example, the Southern Railway System lines during June and July 1943, operated 682 troop trains, and 2,896 extra cars handling troops were operated on regular trains. (28, 29). A special representative of the railroad rides all troop trains. (26) Considerable dead-head movement of equipment is necessary in assembling cars for these troop movements, and returning them to points where they will again go into service; and when foreign line equipment is used mileage payments apply as well on the dead-head movement as on the useful movement. Additional terminal switching costs are incurred by reason of troop train movements. Troop trains are given preference over other traffic, and this occasions delays to freight [fol. 2285] and passenger trains, with resulting increased costs in fuel and wages for those trains. The latter facts, and the further facts that because of shortage of passenger locomotives, freight locomotives are often used for troop-train movements, and troop movements are some times made in mixed trains, results in a part of the increased expenses from troop movements being reflected in the freight accounts rather than the passenger accounts. (26-27, 74-79)

On troop movements the Government does not pay the full published fare, but, except where land grant deductions are involved is allowed by the carriers a discount of 5 per cent from commercial fares. Where the movement is over a route where land grant deductions are applicable, the Government receives a reduction of 50 per cent of the commercial fare for that part of the route which is land grant, plus a further reduction of 3 per cent. Under the so-called equalization agreement of the railroads with the Government, land grant reductions are applied also over competing lines. There is, however, no land grant mileage in Kentucky. (29, 33)

In addition to the increases in their operating expenses so far discussed which are attributable to the increase in passenger traffic, respondents have also had many increases in their expenses attributable to other causes. Since the Commission prescribed the 2-cent coach fare in 1936 there has been a substantial increase in the cost of materials and

supplies used by them. As a composite average for four of respondents,[1] from October 1, 1936, to December 1, 1942, the prices of forest products (ties, bridge timber, lumber, etc.) increased 65 per cent; iron and steel products used by railroads 20 per cent; and fuel (coal and oil), 26 per cent. The average hourly rate of compensation of all employees of the seven principal respondents[2] increased by the following percentages over 1936: 1937, 3 per cent; 1938, 10 per cent; 1939 and 1940, 9 per cent; 1941, 16 per cent; 1942, 24 per cent; average increase 11 per cent. Railway tax accruals of these same carriers increased from a total, in round figures of $36,451,000 in 1936 to $179,958,000 in 1942, an increase of 394 per cent. The railway tax accruals apportioned to passenger service under this Commission's formula, for the same years increased 246 per cent. (Ex. 6)

The freight and passenger operating ratios, respectively of the seven principal respondents averaged as follows: 1936, 59 and 128; 1937, 63 and 130; 1938, 62 and 131; 1939, 61 and 132; 1940, 60 and 136; 1941, 57 and 115; and 1942, 56 and 74. (Ex. 6) In its report in *Increased Railway Rates, Fares, and Charges, 1942*, 255 I. C. C. 357, 394, the Commission said:

> [fol. 2286] The situation regarding standard passenger fares differs from that as to freight rates and charges in important respects. As we have previously shown, the evidence herein discloses that passenger traffic failed for many successive years to pay its proper share of railway expenses, and that only with the large volume of traffic and passenger revenue was the 1942 passenger deficit currently eliminated. Even with that increased volume of traffic and revenue, as shown by the reports for 1942 and the current reports so far made this year, the operating ratio remains de-

---

[1] Chesapeake & Ohio, Illinois Central, Louisville & Nashville, and Southern.

[2] The Cincinnati, New Orleans & Texas Pacific Railway Company, Gulf, Mobile & Ohio, Nashville, Chattanooga & St. Louis, and the four named in footnote 1. Other respondents have only a few miles of road in Kentucky. (137, 138)

cidedly less favorable for passenger and allied services than for freight.

The aggregate net railway operating income from passenger operations of these 7 railroads for recent years was as follows: (Ex. 6)

1936, deficit	$22,763,721
1937, deficit	21,078,023
1938, deficit	24,220,376
1939, deficit	24,189,043
1940, deficit	25,748,961
1941, deficit	18,387,738
1942, income	11,118,537
Average, deficit	17,895,617

Two of respondents had a deficit in 1942.[3] It will be noted that the increase in net railway operating income, passenger, 1942 over 1941, for these 7 roads was $29,506,275.

The Issue of Undue or Unreasonable Advantage, Preference, or Prejudice.—In support of their contention that the fares which are imposed by authority of the State of Kentucky cause undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce on the one hand and interstate commerce on the other hand, respondents rely upon (1) the similarity of the intrastate and interstate services, and (2) the difference in the fares.

All trains operated by respondents are available to interstate and intrastate passengers alike; interstate and intrastate passengers ride the same trains, in the same cars, and the same seats are available to and used by both. (17, 81) Upon this record it appears that there is no difference in the service and conveniences accorded interstate passengers and that accorded intrastate passengers, within the State of Kentucky.

The showing as to the difference in fares consists of exhibits (Exs. 4, 5) comparing the one-way and round-trip fares for interstate journeys with fares for intrastate journeys for similar distances. As an illustration, the fare from Lexington, Ky., to Columbus, Ohio, 197 miles, is $4.44, [fol. 2287] while the fare from Lexington to Owensboro,

[3] Chesapeake & Ohio Railway Company, $1,562,533; Gulf, Mobile and Ohio Railroad Company, $592,468.

Ky., 199 miles, is $3.35, a difference of $1.09. (25) It would serve no useful purpose to multiply illustrations herein, for all are based upon the simple facts that the interstate fares are made 2.2 cents per mile while the intrastate fares are made 1.65 cents per mile.

The Issue of Undue, Unreasonable, or Unjust Discrimination.—To support their contention that the fares imposed by authority of the State of Kentucky cause undue, unreasonable, or unjust discrimination against interstate commerce respondents rely upon the loss of revenues which has resulted from refusal of the Railroad Commission of Kentucky to permit the intrastate fares to be increased to the interstate level. They determined the amount of traffic affected by the rates which they seek to increase, for a period not disclosed on the record but which they believed to be representative, and applied the result over a longer period of time. (133) The intrastate tariffs were published to become effective December 1, 1942. The estimated loss of revenue for the succeeding 7 months for various respondents is as follows: (Ex. 6)

	7 Months Ended June 30, 1943.
Chesapeake & Ohio	$ 23,580
Cincinnati, New Orleans & Texas Pacific	11,803
Gulf, Mobile & Ohio	
Illinois Central	15,002
Louisville & Nashville	247,698
Nashville, Chattanooga & St. Louis	1,390
Southern	7,478
Total	$306,951

Upon the above basis the estimated annual loss of revenue to all the principal respondents approximates $526,000.

Respondents say that in addition to the revenue losses above estimated, they are undoubtedly losing a substantial amount of revenue by reason of passengers who intend to make an interstate journey purchasing intrastate tickets to points on or near the State line, and either repurchasing at such points or paying cash fares for the remainder of their interstate trips. Numerous instances of the possibility of doing this were given (Exs. 3, 4), but it was conceded that it is very difficult to obtain direct evidence

of such transactions. It is known to occur in the case of passengers buying tickets from points in Kentucky to Ludlow, Ky., just across the river from and intermediate to Cincinnati, and remaining on the train to Cincinnati. Oftimes the conductor does not reach such passengers to collect an additional fare, as the time between the two sta- [fol. 2288] tions is only 5 minutes. (18, 21, 22, 37, 39, 82-86) Such evidence requires no special consideration, since the effect, to the extent that passengers are engaging in such a practice, is necessarily fully reflected in the above estimate of revenue losses.

Protestants' Evidence.—Protestant Railroad Commission of Kentucky shows that the present intrastate one-way fares between representative points average 14.7 percent higher, and the proposed fares 40.7 percent higher, than the one-way motorbus fares from and to the same points, and the present and proposed round-trip fares average 9 and 41 percent higher than the round-trip motorbus fares. (Ex. 7) Differences in rail and bus fares are sometimes due to differences in distance.

Passenger traffic and revenues therefrom in Kentucky have increased in recent years, as indicated by reports of the 7 respondents[4] having approximately 96 percent of the total railroad mileage in Kentucky. Passenger revenues earned in Kentucky on intrastate and interstate traffic were $4,182,411 in 1939, $4,493,479 in 1940, $6,497,525 in 1941, and $14,023,436 in 1942. Passengers carried by the same railroads and for the same years were 2,925,085, 3,065,609, 3,931,378, and 6,633,604. Passenger miles increased from 230,594,000 in 1939 to 723,909,000 in 1942. The average number of passengers per car-mile was 10.6 for 1939, and 22.3 for 1942. As indicating the proportion of passenger revenues accruing in the State of Kentucky which is derived from intrastate traffic only, for the Louisville & Nashville in 1939 the total was $2,200,241, and the intrastate was $519,726, while the corresponding revenues for the Chesapeake & Ohio were $682,716 and $146,987. (Ex. 8)

Turning to the system figures for the seven principal respondents, following is a comparison of the first six

[4] Chesapeake & Ohio; Cincinnati, New Orleans & Texas Pacific; Illinois Central; Louisville & Nashville; and Southern.

months of 1942 with the same period of 1943. Freight revenues, $328,971,432 and $393,358,095; passenger revenues $37,617,828 and $83,550,668; total operating revenues, $365,967,329 and $502,695,431; total operating expenses, $235,959,500 and $286,040,531; operating ratio, 64.5 and 56.9; and net railway operating income, $66,457,303 and $78,241,371. (Ex. 9)

As protestants point out, these seven respondents in recent years have been able to take care of their increases in operating expenses and railway tax accruals, and still show consistent and substantial increases in their net railway operating income. The relation of net railway operating income to investment in railway property including cash, materials and supplies for the seven principal respondents shows average rates of return as follows: 1938, 2.98 percent; 1939, 3.76 percent; 1940, 3.95 percent; 1941, 5.41 percent; and 1942, 5.78 percent. (Exs. 10, 19) It should [fol. 2289] be noted that these rates of return are computed after deduction of Federal income taxes. In *Increased Railway Rates, Fares, and Charges, 1942*, 248 ICC 545, 556, the Commission said:

> We may observe that, while taxes have been deducted in stating net railway operating income in the foregoing table, we have held, *Reduced Rates, 1922*, 68 ICC 676, 683, that—
>
> railway corporations should, like other corporations, pay their Federal income taxes out of the income, rather than collect, it, in effect, from the public in the form of transportation charges adjusted to enable it [them] to retain the designated fair return over and above the tax.

The Acting Price Administrator, on behalf of himself and the Director of Economic Stabilization, opposes any increase in fares. Objection was made at the hearing and renewed in his brief, to the admission of testimony by two witnesses concerning the use of the intrastate fares by passengers making interstate journeys, upon the ground that it was hearsay. (21, 82) The strict rule observed in jury trials concerning hearsay evidence is not binding upon this Commission in an inquiry into the existence of undue prejudice, preference, and discrimination. *William Kelly Milling Co. v. Atchison, T. & S. F. Ry. Co.*, 211 ICC 53, 65.

The witnesses were an assistant passenger traffic manager and a division superintendent, and the facts to which they testified were reported to them in their official capacity by subordinate employees. The examiner properly admitted the testimony.

This intervener contends that because of changed conditions resulting from the war the interstate level of coach fares, 2.2 cents, which applies not only throughout the South, but throughout the United States, is unreasonably high, and that the Commission should require reduction of such rates to 1.65 cents per mile. While, in order to find undue prejudice and preference under section 13(4) and order its removal it would be necessary to find the reasonable maximum or minimum or maximum and minimum interstate fares, the reasonableness of the interstate fares in this proceeding is a collateral issue; and not being directly in issue they may not be required to be reduced in this proceeding.

As evidence that the interstate fare basis of 2.2 cents per mile is unreasonably high, intervener relies upon the fact that during peacetimes when passenger service was furnished by respondents at a loss the fare of 2 cents per mile was too high to produce the greatest amount of revenue, as respondents found when they increased the fare from 1.5 cents to 2 cents on November 15, 1937; and they restored the 1.5-cent fare on January 15, 1939. (16, 46, 47) They [fol. 2290] also rely upon the fact that when passenger service was furnished at a loss, this Commission approved general levels of freight rates which took into consideration these passenger losses. *Fifteen Percent Case, 1937-1938*, 226 ICC 41, 54, and these returns from freight traffic have been multiplied during the war by greatly increased freight traffic, while the passenger service itself is now returning a profit. It is therefore contended that either the passenger fares or the freight rates should be reduced.

If freight traffic is now producing more than a fair return for the above-mentioned reason or any other reason, it may be dealt with in an appropriate proceeding. The evidence in this record does not indicate that the passenger traffic of these respondents as a group is producing more than a fair return.

Discussion, Ultimate Findings of Fact, and Conclusions

Section 13(4) authorizes us to prescribe intrastate rates only when, after full hearing, we find that the existing rates

are imposed by authority of the State and cause "undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce on the one hand and interstate or foreign commerce on the other hand, or any undue, unreasonable, or unjust discrimination against interstate or foreign commerce." We will consider first whether the first of these provisions has been or is being violated—that relating to undue or unreasonable advantage, preference, or prejudice.

Evidence to sustain an order and finding that intrastate rates are violative of section 13(4) in that they unduly prejudice persons or localities must be of equal dignity and probative value with the evidence required to sustain a finding under section 3. *Barrett Co.* v. *Atchison, T. & S. F. Ry. Co.*, 172 ICC 319, 334. We have frequently found that the evidence to support a finding of undue prejudice and preference must ordinarily establish that such prejudice and preference constitute a source of undue disadvantage to one party and of undue advantage to another. *Rates on Raw Dolomite and Fluxing Stone in Ohio*, 188 ICC 495, 512. No persons who pay the higher interstate fares and no localities are appearing herein to complain of undue or unreasonable advantage, prejudice, and preference, and as far as this record shows, none have complained to respondents. (119, 120, 145, 174, 181, 182, 206) Respondents do not ask relief for any particular persons or places, but seek a Statewide order. In *Rates on Raw Dolomite and Fluxing Stone in Ohio, supra*, at 511, 512, the Commission said:

> We have no authority to increase intrastate rates unless it is clearly shown that they are working injury [fol. 2291] to shippers or localities in interstate commerce or discriminate unjustly against such commerce. *Dewey Portland Cement Co.* v. *Alton & E. R. Co.*, 176 I. C. C. 671. It is also well settled that a mere difference in rates is not enough to establish such facts. It must be shown that the difference in rates, actual or relative, is the moving factor in creating undue prejudice to competing shippers in interstate commerce or in casting an undue burden upon or obstructing such commerce. *Dewey Portland Cement Co.* v. *Atchison, T. & S. F. Ry. Co.*, 174 I. C. C. 87.

That a mere difference in rates does not alone make out a case under section 13(4), see also *Intrqstate Rates Within Louisiana*, 164 I. C. C. 600, 616.

Disparities between the intrastate and interstate rates were shown and are described herein. But it is not shown in what way any passenger or locality in interstate commerce is injured by this disparity, or how they would be benefited by an increase in the intrastate fares.

Upon the evidence we find that the intrastate fares here considered are imposed by authority of the State of Kentucky; that there is a real and substantial disparity between those fares and the interstate fares applicable in Kentucky and other Southern States; that the interstate fares are not shown to be in excess of maximum reasonable fares; that there is a substantial passenger traffic moving under both intrastate and interstate rates; that interstate and intrastate passengers ride on the same trains in Kentucky and receive the same services; and that no injury is shown upon this record to result to the interstate passengers or localities by reason of intrastate passengers being charged lower fares, which would be relieved by increasing the intrastate fares to the interstate level.

Upon these facts it is recommended that the Commission find that the intrastate rates imposed by authority of the State of Kentucky have not been shown to cause any undue or unreasonable advantage, preference or prejudice as between persons or localities in intrastate commerce on the one hand and interstate or foreign commerce on the other hand.

Turning now to the second portion of section 13(4), which prohibits and makes unlawful any undue, unreasonable, or unjust discrimination against interstate or foreign commerce caused by rates, fares, or regulations imposed by authority of any State: Section 15a, which is intended, among other things, to insure a fair return for carriers, provides that in the exercise of its power to prescribe just and reasonable rates the Commission shall give due consideration, among other factors, to the need, in the public [fol. 2292] interest, of adequate and efficient railway transportation service at the least cost consistent with the furnishing of such service, and to the need of revenues sufficient to enable the carriers, under honest, economical, and efficient management to provide such service. The Supreme Court, construing the above provision of section 13(4) in

Railroad Comm. of Wisconsin v. *Chicago, B. & Q. R. Co.*, 257 U. S. 563, 585, 586, 589-591, said:

> Intrastate rates and the income from them must play a most important part in maintaining an adequate national railway system. * * *
>
> When we turn to paragraph 4, section 13, however, and find the Commission for the first time vested with a direct power to remove "any undue, unreasonable, or unjust discrimination against interstate or foreign commerce," it is impossible to escape the dovetail relation between that provision and the purpose of section 15a. If that purpose is interfered with by a disparity of intrastate rates, the Commission is authorized to end the disparity by directly removing it, because it is plainly an "undue, unreasonable, and unjust discrimination against interstate or foreign commerce," within the ordinary meaning of those words. * * *
>
> Congress, in its control of its interstate commerce system, is seeking in the Transportation Act to make the system adequate to the needs of the country by securing for it a reasonably compensatory return for all the work it does. * * *
>
> Action of the Interstate Commerce Commission in this regard should be directed to substantial disparity which operates as a real discrimination against, and obstruction to, interstate commerce.

At that time section 15a did not read the same as at present, but its general purpose was to secure to the carriers revenues sufficient to enable them, under honest, efficient, and economical management, to provide in the public interest adequate and efficient transportation service, the same as under the present provisions.

The mere showing of a disparity between interstate and intrastate rates is not, when confined to a specific class of traffic, sufficient to support a finding of undue, unreasonable, or unjust discrimination against interstate commerce. *Florida* v. *United States*, *supra*; *Florida* v. *United States*, 292 U. S. 1; *Utah Edible Livestock Rates and Charges*, 206 I. C. C. 309, 312.

When we come to consider the question of whether, under the present conditions confronting respondents, the addition of approximately $526,000 of annual revenues from

Kentucky intrastate passenger traffic is necessary in order to enable them to fulfill their national purposes as contemplated by section 15a, and whether the action of the Rail-[fols. 2293-2295] road Commission of Kentucky in refusing to permit the increase in fares which will produce approximately this amount constitutes an obstruction to interstate commerce, we must unhesitatingly reply in the negative. Respondents' average passenger operating ratio in 1942 was 74. Respondents' contention that "the losses in revenue directly resulting from the low level of intrastate fares respondents are now required to maintain in Kentucky, which have been proved with almost mathematical exactness, are all that is needed to justify" the finding sought, must be rejected as an inaccurate statement of the law, and out of harmony with the reasoning of the Supreme Court in the opinion last above quoted. The failure of respondents to receive this additional intrastate revenue is not at the present time casting any undue burden upon interstate commerce.

Upon t[illegible] facts found it is recommended that the Commission find that the intrastate fares herein considered, imposed by State authority, do not cause any undue, unreasonable, or unjust discrimination against interstate or foreign commerce.

Effect of The Stabilization Act.—The Acting Price Administrator, on behalf of himself and the Director of Economic Stabilization, asks that we give effect to the complementary Congressional policies embodied in the Interstate Commerce Act and in the Price Control and Stabilization Acts, by denying increases where these are not shown to be necessary, either to aid in the effective prosecution of the war or to correct gross inequalities, or where the proposed rates are not shown to be just and reasonable.

The proposed increased fares have not been shown to be necessary, either to aid in the effective prosecution of the war or to correct gross inequalities.

An order discontinuing the proceeding should be entered.

[fols. 2296-2299] IN UNITED STATES DISTRICT COURT

No. 706

THE STATE OF ALABAMA and PUBLIC SERVICE COMMISSION, Plaintiffs,

vs.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, Defendants

No. 707

THE STATE OF TENNESSEE and PORTER DUNLAP et al, Constituting The Railroad and Public Utilities Commission of the State of Tennessee, Plaintiffs,

vs.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, Defendants

No. 708

COMMONWEALTH OF KENTUCKY and RAILROAD COMMISSION OF KENTUCKY, Plaintiffs,

vs.

UNITED STATES OF AMERICA, Defendant

ORDER CONVENING THREE-JUDGE COURT

Pursuant to section 47 Title 28 of the United States Code, on an application made to me for preliminary or interlocutory injunction, it appearing that the Bill of Complaint in each of the above three cases is brought to enjoin the enforcement of an order of the Interstate Commerce Commission, I hereby call to my assistance for the hearing of the application and cause, the Honorable Elwood Hamilton, Judge of the Circuit Court of Appeals for the Sixth Circuit, and the Honorable Mac Swinford, District Judge of the Eastern and Western Districts of Kentucky.

This 20th of June 1944.

Shackelford Miller, Jr., United States District Judge.

[fol. 2300] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

Civil Action No. 708

COMMONWEALTH OF KENTUCKY, and RAILROAD COMMISSION OF KENTUCKY, Plaintiffs,

v.

UNITED STATES OF AMERICA, Defendant

ACKNOWLEDGMENT OF SERVICE—Filed July 5, 1944

To the Honorable Judges of said Court:

Now comes J. E. Marks, attorney for the above-named Plaintiffs, and acknowledges service by a copy of the Motion to Intervene as Plaintiff in the above entitled proceeding, with accompanying Complaint (Petition) of Fred M. Vinson, Economic Stabilization Director, by Chester Bowles, Price Administrator, including the affidavit and attached tabulations of one Doris S. Whitnack.

The Plaintiffs have no objection to the granting of the motion to intervene.

Dated at Lexington, Ky., this 3rd day of July, 1944.

J. E. Marks.

[fol. 2301] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

Civil Action No. 708

COMMONWEALTH OF KENTUCKY, and RAILROAD COMMISSION OF KENTUCKY, Plaintiffs,

v.

UNITED STATES OF AMERICA, Defendant

ACKNOWLEDGMENT OF SERVICE—Filed July 3, 1944

To the Honorable Judges of said Court:

Now comes the United States of America, defendant in the above entitled proceeding, and the Interstate Commerce

Commission, and acknowledge service by copy of the Motion to Intervene as Plaintiff with accompanying Complaint (Petition) of Fred M. Vinson, Economic Stabilization Director, by Chester Bowles, Price Administrator, including the affidavit and attached tabulations of one Doris S. Whitnack.

Dated at Washington, D. C., this 29th day of June, 1944.

Robert L. Pierce, Special Assistant to the Attorney General, for the Attorney General of the United States. Allen Crenshaw, P., for the Interstate Commerce Commission.

[fol. 2302] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

Civil Action No. 708

COMMONWEALTH OF KENTUCKY, and RAILROAD COMMISSION OF KENTUCKY, Plaintiffs,

v.

UNITED STATES OF AMERICA, Defendant

MOTION FOR LEAVE TO INTERVENE AS A PLAINTIFF—Filed July 6, 1944

Fred M. Vinson, Economic Stabilization Director, by Chester Bowles, Price Administrator, moves for leave to intervene as a plaintiff in this action, and to assert the causes of action set forth in his Complaint (Petition), of which a copy is hereto attached, on the ground that the Price Administrator, on his own behalf and on behalf of the Economic Stabilization Director, was an intervener participating in the proceeding of the Interstate Commerce Commission leading to the order which is the subject of this suit (Title 28, U. S. C., Sec. 45a); on the ground that plaintiffs herein rely for relief upon provisions of the Emergency Price Control Act of 1942, as amended by the Stabilization Act of October 2, 1942 (50 U. S. C. App., Sec. 925(d)); and on the ground that the Economic Stabilization Director and the Price Administrator have administrative duties under the said Acts affected by said order; and as such

[fol. 2303] they have causes of action presenting both questions of law and of fact which are common to the main action.

Respectfully submitted, Fred M. Vinson, Director of the Office of Economic Stabilization, by Chester Bowles, Price Administrator of the Office of Price Administration; Richard H. Field, General Counsel, Office of Price Administration; David F. Cavers, Assistant General Counsel, Office of Price Administration; Bernard M. Fitzgerald, Transportation Counsel, Transportation and Public Utilities Division, Office of Price Administration; M. D. Miller, Attorney, Office of Price Administration, 5319 Federal Office Building No. 1, 2nd and D Streets, S. W., Washington 25, D. C.

(Motions similar in form and content, omitted in printing, were filed in Cases No. 706 and 707.)

[fol. 2304] [File endorsement omitted]

[fol. 2305] IN UNITED STATES DISTRICT COURT

Civil Action No. 708

COMMONWEALTH OF KENTUCKY and RAILROAD COMMISSION OF KENTUCKY, and Fred M. Vinson, Economic Stabilization Director, by Chester Bowles, Price Administrator, Plaintiffs,

v.

UNITED STATES OF AMERICA, Defendant

COMPLAINT (PETITION)—Filed July 6, 1944

1. This suit is brought under the Urgent Deficiencies Act of October 22, 1913, 28 U. S. C. A. 43-48, to suspend, enjoin, annul, and set aside the order of the Interstate Commerce Commission hereinafter described.

2. Fred M. Vinson is the duly appointed and acting Director of the Office of Economic Stabilization. By virtue of Executive Order 9250 (7 F. R. 7871), issued October 3, 1942, the Director of the Office of Economic Stabilization is the agency designated by the President of the United

State to receive notice of any general increase in the rates charges of common carriers or other utilities over those in effect on September 15, 1942, pursuant to the Stabilization Act of October 2, 1942 (Public Law 729, 77th [fol. 2306] Congress, 2nd Session, 50 U. S. C. A. App. §§961-971). By Directive No. 1 (7 F. R. 8758), issued by the Economic Stabilization Director on October 14, 1942, the Price Administrator of the Office of Price Administration was designated as the representative of said Director to receive notices of such general increases in common carrier or other public utility rates or charges under Section 1 of said Stabilization Act (50 U. S. C. A. App. §961), with authority to intervene and participate in proceedings before Federal, State, and municipal authorities in connection with proposed general increases in such rates and charges; and the said Chester Bowles is the duly appointed and acting Price Administrator of said Office of Price Administration.

3. Pursuant to the direction of said Stabilization Act of October 2, 1942, the President issued Executive Order 9250, mentioned in paragraph 2 hereof, said order stating in part:

> The guiding policy of the (Economic Stabilization) Director and of all departments and agencies of the Government shall be to stabilize the cost of living in accordance with the Act of October 2, 1942; and it shall be the duty and responsibility of the Director and of all departments and agencies of the Government to cooperate in the execution of, such administrative programs and in the development of such legislative programs as may be necessary to that end. The administration of activities related to the national economic policy shall remain with the departments and agencies now responsible for such activities, but such administration shall conform to the directives on policy issued by the Director. (Title I, Section 4)

[fol. 2307] Subsequently, on April 8, 1943, the President issued Executive Order 9328 (8 F. R. 4681), a subsection of said order making the following direction of agencies engaged in regulation of common carrier rates and charges.

"The attention of all agencies of the Federal Government, and of all State and municipal authorities, con-

cerned with the rates of common carriers or other public utilities, is directed to the stabilization program of which this order is a part so that rate increases will be disapproved and rate reductions effected, consistently with the Act of October 2, 1942, and other applicable federal, state or municipal law, in order to keep down the cost of living and effectuate the purposes of the stabilization program. (Section 4)

4. By order of August 1, 1942, the Interstate Commerce Commission authorized the railroads operating in southern territory, which territory includes the State of Kentucky to increase passenger coach fares, in interstate commerce, to the basis of 2.2 cents per mile; and by tariffs which became effective on October 1, 1942, the railroads operating in said territory and State made general increases of coach fares for transportation of passengers in interstate commerce to the level of 2.2 cents per mile one-way, and 1.98 cents per mile roundtrip with a return limit of three months. Said increases of fares were protested and the suspension of their operation was requested by the Price Administrator, but the Interstate Commerce Commission declined to suspend.

[fol. 2308] 5. By schedules filed with the Railroad Commission of Kentucky to become effective December 1, 1942, the principal Class I railroads operating in Kentucky sought to increase passenger coach fares between points within said State to the interstate level as aforesaid. Upon protest of the Price Administrator and various citizens of Kentucky the Railroad Commission heard the matter, at which hearing an appearance was made by a representative of the Office of Price Administration for the Economic Stabilization Director and the Price Administrator. The Railroad Commission found that the proposed increases of coach fares were not shown to be just and reasonable, and ordered cancelation of the said schedules to this extent.

6. By petition dated June 24, 1943, filed with the Interstate Commerce Commission, the Chesapeake and Ohio Railway Company; The Cincinnati, New Orleans and Texas Pacific Railway Company; Gulf, Mobile and Ohio Railroad Company; Illinois Central Railroad Company; Louisville and Nashville Railroad Company; The Nashville, Chattanooga and St. Louis Railway; and Southern Railway Com-

pany sought an order from said Commission prescribing increased fares to be charged intrastate passengers within Kentucky to remove alleged unjust and unlawful advan- [fol. 2309] tage, preference, prejudice, and discrimination as between intrastate and interstate commerce (section 13(4) of the Interstate Commerce Act); whereupon the said Commission heard the matter, at which hearing an appearance was entered for the Price Administrator, on his own behalf and on behalf of the Economic Stabilization Director, as intervener in opposition to said increases in fares.

7. By petition filed with the Interstate Commerce Commission on or about July 31, 1943, the Price Administrator sought a general investigation by the Interstate Commerce Commission of the reasonableness, under present conditions, of interstate coach fares of all railroads in Southern Territory. Said petition was denied, however, by the Interstate Commerce Commission.

8. By a report decided March 25, 1944, served March 30, 1944, in No. 29000, *Kentucky Intrastate Fares* and related cases (issued under No. 28963, *Alabama Intrastate Fares*) the Interstate Commerce Commission granted the said petition mentioned in paragraph 6 hereof, holding that the Commission would consider entry of an appropriate order if the Railroad Commission of Kentucky did not adjust, within thirty days from said service date, the intrastate fares in the State of Kentucky to the level of the corresponding interstate fares contemporaneously maintained by the Kentucky railroads, to, from, and through said State; provided, that the aggregate charge [fol. 2310] made by any of the railroads for the intrastate transportation shall not exceed the aggregate charge made for like accommodations and for a like distance by the same railroad for interstate transportation to, from, or through such State.

9. On or about April 26, 1944, the Price Administrator filed a petition with the Interstate Commerce Commission, on his own behalf and on behalf of the Economic Stabilization Director, and requested that said Commission reconsider its decision set forth in said report mentioned in paragraph 8 hereof. By an order of May 8, 1944, the Commission denied said petition.

10. By another and separate order dated May 8, 1944, as changed by a corrected order of the same date issued on or about May 24, 1944, the Interstate Commerce Commission required the railroads operating in the State of Kentucky to establish, on or before July 1, 1944, upon notice to the Commission and to the general public by not less than 30 days filing and posting in the manner prescribed in Section 6 of the Interstate Commerce Act, and thereafter to maintain and apply, passenger fares for intrastate transportation in Kentucky which shall be on bases no lower than the passenger fares presently maintained and applied by said railroads for like accommoda-
[fol. 2311] tions in interstate transportation to, from, and through Kentucky; provided, that the resulting aggregate charge made by any of said railroads for intrastate transportation in Kentucky shall not exceed the aggregate charge made for like accommodations and for a like distance for the same railroad in interstate transportation to, from, or through such State.

11. In the report mentioned in paragraph 8 hereof, the Interstate Commerce Commission failed or refused to give full effect to wartime conditions and the stabilization legislation, although it was under a duty to do so.

(a) The Commission erred, as a matter of law, in concluding that its consideration of the stabilization legislation should be limited to a finding that common carriers making rate increases have complied with the requirement of Section 1 of the Stabilization Act, by the giving of notice and consent to intervene to the designated Federal agent. In addition to such a finding, the Commission was under a duty to accommodate the provisions of the Interstate Commerce Act to the statutory wartime programs of the Emergency Price Control Act of 1942 and the amendatory Stabilization Act of October 2, 1942, and was under a duty to adjust its actions as indicated by the desires of Congress to have the policies of said price control
[fol. 2312] and stabilization legislation leavened or implemented in the enforcement of the various specific provisions of the legislation with which the Commission is primarily and directly concerned.

(b) The Commission failed or refused to determine that increases of coach fares over those in effect on

September 15, 1942, were inconsistent with the declaration of Congressional policy in Section 1 of the Emergency Price Control Act of 1942, namely, that it is necessary to the effective prosecution of the present war, and certain purposes of that Act are, "to stabilize prices and to prevent speculative, unwarranted, and abnormal increases in prices and rents; to eliminate and prevent profiteering, hoarding, manipulation, speculation, and other disruptive practices resulting from abnormal market conditions or scarcities caused by or contributing to the national emergency; to assure that defense appropriations are not dissipated by excessive prices; to protect persons with relatively fixed and limited incomes, consumers, wage earners, investors, and persons dependent on life insurance, annuities, and pensions, from undue impairment of their standard of living. * * *"

[fol. 2313] (c) On the contrary, the findings of the Commission, and the uncontradicted evidence submitted to the Commission by the railroads at the hearing mentioned in paragraph 6 hereof, reveal that the increases of passenger coach fares in the Southern territory and Kentucky over those in effect on September 15, 1942, were abnormal in relation to peacetime conditions, and that said increases were made possible or practical because of inflationary wartime conditions and the restricted use of automobiles during the war emergency. From December 1, 1933, to November 14, 1937, inclusive, the general basis of interstate and intrastate coach fares in Southern territory and Kentucky was 1.5 cents per mile. From November 15, 1937, to January 14, 1939, inclusive, the general basis of coach fares, interstate and intrastate in said territory and Kentucky, was 2.0 cents per mile. On January 15, 1939, said fares were reduced to the basis of 1.5 cents per mile, to which 10 percent increases were added on February 10, 1942, bringing the basis of said fares to 1.65 cents per mile. Said fares of 1.5 cents per mile were maintained primarily to attract traffic that had been diverted chiefly to private automobiles. The reduction in fares from [fol. 2314] the basis of 2.0 cents to 1.5 cents per mile, effective January 15, 1939, resulted from the conclusion

of certain Southeastern railroads that "it would be to their advantage to restore the former one-way coach fare of 1.5 cents per mile" (See page 16 of the Transcript of Testimony taken at the hearing before the Interstate Commerce Commisison, mentioned in paragraph 6 hereof). The adverse effects upon traffic of the increases of said fares for the fourteen months following November 15, 1937, for the Kentucky railroads, was described by the witness for the railroad respondents at said hearing, who testified as quoted above, and who expanded that testimony as follows (Transcript at pages 46-47):

"A. They reached the conclusion because the 2 cents increase did not produce the results they anticipated that it would produce.

"Q. You mean by that the total revenue produced by the 1½ cent fare was more than the total revenue being produced by the 2 cent fare?

"A. Generally speaking, I would say that that is correct."

[fol. 2315] Corroboration of the testimony is unmistakably shown by the following data voluntarily submitted by said railroads to the Commission in their Exhibits submitted as evidence *in their Exhibits submitted as evidence* in the proceedings mentioned in paragraph 6 hereof:

Revenue Passenger Miles Per Train Mile
(Exhibit 6, pages 24 and 25)

1931	30.10	1937	48.3
1932	27.78	1938	39.4
1933	32.9	1939	43.9
1934	38.7	1940	48.6
1935	38.7	1941	62.7
1936	44.8	1942	119.7
		1st 4 mo. 1943	162.5

	Revenue per Passenger Mile in Coaches Ex. 6, p. 14	Revenue Per Coach Mile Ex. 6, p. 16	Passenger Service Operating Ratio Ex. 6, p. 10	Passenger Miles per Coach Mile Ex. 6, p. 30
1937	1.517¢	23.65¢	130%	15.60
1938	1.772	21.85¢	131	12.33

Percent change	Favorable	Unfavorable	Unfavorable	Unfavorable
1937 to 1938	16.8%	7.6%	0.8%	21.0%
1939	1.482¢	21.12¢	132	14.25
1940	1.437	22.66	136	15.77
1941	1.506	29.41	115	19.53
1942	1.686	52.02	74	30.85
Percent change	Favorable	Favorable	Favorable	Favorable
1941 to 1942	12.0%	76.9%	35.6%	58.0%

Economic conditions since 1939 have greatly changed, and the increased intrastate fares required by the Commission, as mentioned in paragraph 7 hereof, will [fol. 2316] produce added revenues. The railroads operating in Kentucky are, therefore, authorized and required by said corrected order, mentioned in paragraph 10 hereof, to take advantage of wartime conditions to increase passenger coach fares to a level which said railroads found disadvantageous during peacetime.

(d) In said report the Interstate Commerce Commission failed or refused to be governed by the declaration or finding of Congress in the Stabilization Act of October 2, 1942, that general increases of common carrier rates or charges above those in effect on September 15, 1942, are inflationary *per se*, and that stabilization of such rates and charges is necessary to aid in the effective prosecution of the war.

The said corrected order of May 8, 1944, mentioned in paragraph 10 hereof, having been issued contrary to the intentions and desires of Congress, transcends the Commission's constitutional or statutory powers, and is unlawful, void, and of no effect.

12. In the report of March 25, 1944, mentioned in paragraph 8 hereof, the Interstate Commerce Commission acted in disregard of the executive orders of the President set forth in paragraph 3 hereof, although said Commission [fol. 2317] had both the power and duty to cooperate in the wartime stabilization program of Congress as set forth in the Emergency Price Control Act of 1942 and the Stabilization Act of October 2, 1942. The said corrected order of May 8, 1944, mentioned in paragraph 10 hereof, having been issued contrary to the said executive order, therefore transcends the Commission's constitu-

tional or statutory powers, and is unlawful, void, and of no effect.

13. In said report of March 25, 1944, mentioned in paragraph 8 hereof, the Interstate Commerce Commission did not make sufficient findings of basic facts to support the Commission's sixth enumerated finding and conclusion that the Kentucky intrastate coach fares cause and will cause undue and unreasonable advantage to and preference of persons in intrastate commerce, undue and unreasonable disadvantage to and prejudice against persons in interstate commerce, and undue, unreasonable, and unjust discrimination against interstate commerce. Under the Interstate Commerce Act, the Commission is empowered to prescribe intrastate rates, fares, and charges only after findings of facts that any advantage, preference, prejudice, or discrimination from the intrastate fares causes some result which is undue, unjust, or unreasonable as respects interstate commerce. The said report of the Commission does not state any finding of fact showing any undue, [fol. 2318] unjust, or unreasonable result caused by the differences between the interstate and intrastate coach fares mentioned in said report. The said corrected order of May 8, 1944, having been based upon insufficient findings of basic fact, therefore transcends the Commission's constitutional and statutory powers, and is unlawful, void, and of no effect.

14. The record before the Interstate Commerce Commission in the proceeding mentioned in paragraph 6 hereof does not contain substantial evidence to clearly support the sixth enumerated finding mentioned in the preceding paragraph. Said finding is therefore arbitrary. The Commission's said corrected order of May 8, 1944, mentioned in paragraph 10 hereof, being based upon said arbitrary finding, is also arbitrary, transcends the Commission's constitutional and statutory powers, and is void and of no effect.

15. The Interstate Commerce Commission erred, as a matter — law, in its fourth enumerated finding of said report of March 25, 1944, mentioned in paragraph 8 hereof, that transportation of interstate passengers in the State of Kentucky, in the same trains and generally in the same cars with intrastate passengers, which interstate passen-

gers are forced to pay higher fares than the intrastate passengers, causes undue and unreasonable advantage and [fol. 2319] preference of the intrastate passengers, and undue and unreasonable disadvantage and prejudice of the interstate passengers. The said corrected order of May 8, 1944, having been based upon an error of law, therefore transcends the Commissions' constitutional and statutory powers, and is unlawful, void, and of no effect.

16. In said report of March 25, 1944, mentioned in paragraph 7 hereof, the Interstate Commerce Commission erred in that part of its fifth enumerated finding that "traffic moving under these lower intrastate fares is not contributing its fair share of the revenues required to enable respondents to render adequate and efficient transportation service".

(a) The quoted finding was based in part upon findings of facts with respects to so-called passenger service net railway operating deficits from 1936 to 1941, inclusive, incurred while interstate and intrastate coach fares were on the same general basis. The Kentucky railroads are not entitled to regulation by the Commission which will insure that the said railroads' businesses will produce net revenues, nor does the Constitution require that the losses of such businesses in past years be restored from future earnings.

(b) The quoted finding of the Commission was made without consideration of the fact that said Commis- [fol. 2320] sion had authorized general levels of freight rates to include a factor for the support of said passenger service because of said deficits. *Passenger Fares and Surcharges*, 214 I. C. C. 174, 227, the Commission said:

> "That the generally unprofitable nature, for the last decade, of the rail passenger service throughout the country has been consistently given consideration by us in determining the reasonableness of freight rates, is amply demonstrated by expressions in our annual reports to the Congress and in numerous decisions. * * *"

In the *Fifteen Percent Case*, 1937-1938, 226 I. C. C. 41, the Commission authorized the railroads of the coun-

try to make a 10 percent increase in freight rates generally, with certain exceptions, and said (p. 54):

> "This deficit in the passenger traffic as a whole has continued from at least 1926, mounting steadily to a peak in 1932, and receding only slightly thereafter. *Passenger Fares and Surcharges*, 214 I. C. C. 174, 182. The interrelation of the freight and passenger traffic has often been commented on by us, and we have declined to accede to the proposition again repeated here by certain protestants that we can authorize no increase in freight rates to correct deficiencies in aggregate earnings growing out of the inability of the passenger business to meet its full share of the revenue burden."

(c) In considering the statistics in the regular monthly reports of Class I railroads to the Interstate Commerce Commission, the Commission compared figures for December 1943 with prior months to indicate a trend of unfavorable increased expenses and reduced revenues. However, the figures for said [fol. 2321] monthly reports clearly show that those for December 1943 were abnormal, particularly with respect to year-end adjustments for wages and taxes, as set forth and illustrated by the affidavit of one Doris S. Whitnack, attached hereto and made part hereof, and as shown by Table IV and the graph which is part of said affidavit. Said findings of the Commission therefore are arbitrary and capricious.

(d) In said report, the Commission stated that the relation of net railway operating income to investment in railway property, including cash, materials, and supplies for seven principal Kentucky railroads, reflected average rates of return, after Federal income taxes, as follows: 1938, 2.98 percent; 1939, 3.76 percent; 1940, 3.95 percent; 1941, 5.41 percent; and 1942, 5.78 percent. The Commission then stated that the evidence before it did not indicate that the passenger traffic of these railroads as a group is producing more than a fair return. The Commission erred in this latter statement; however, for the reason that there was evidence of record to indicate that such passen-

ger traffic is producing more than a fair return. Exhibits Nos. 12 and 17, introduced as evidence in the [fol. 2322] hearing mentioned in paragraph 6 hereof, show that the rate of return for seven principal Kentucky railroads from net railway operating income before deduction of Federal income taxes, for the 12 months ended June 30, 1943, was 18.11 percent of a base consisting of the book investments of said railroads, plus cash, materials and supplies, less accrued depreciation and accrued amortization of defense projects as of December 31, 1942.

(e) There is no evidence in the record before the Commission supporting the Commission's statement in said report that the rates of return found by the Commission were based upon investment in railway property for the seven principal Kentucky railroads. To the contrary, the statistician witness for said railroads admitted at the said hearing that the said investment figure was not the investment of said carriers, but included the investment of others in the property used by said carrier (see Transcript of Testimony of said hearing at page 126-127).

(f) In considering the aforesaid rates of return set forth in the said report, the Commission erred, as a matter of law, with respect to its finding of the fairness of returns from passenger traffic, for the reason [2323] that the said investment in railway property, mentioned in the preceding subsection of this paragraph, includes no deduction for accrued depreciation (see Transcript of Testimony at page 104).

(g) In making such a finding with respect to the fairness of the above stated rates of return, the Commission erred, as a matter of law, for the reason that it did not consider net revenues of the Kentucky railroads prior to deduction of wartime income taxes. At said hearing before the Commission, the statistician witness for the railroad respondents admitted that about 80 percent of the increased revenues which would result from increases of Kentucky intrastate coach fares, to the corresponding level of the interstate fares, would be paid in taxes, mostly to the United States Government (see Transcript of Testimony at page 122).

The said order of May 8, 1944, mentioned in paragraph 9 hereof, having been based upon errors of law and arbitrarily stated and considered facts, transcends the Commission's constitutional and statutory powers, and is unlawful; void, and of no effect.

17. The maintenance of passenger coach fares to, from, and between points in Kentucky in interstate and intrastate commerce, upon the general basis of 1.65 cents per [fol. 2324] mile under present conditions would not impose an undue burden upon or undue injury to interstate or foreign commerce.

(a) In *Passenger Fares and Surcharges*, 214 I. C. C. 174, decided February 28, 1936, the Interstate Commerce Commission found that the existing passenger coach fares in the Southern Territory and Kentucky, on the general basis of 1.5 cents per mile in interstate commerce, were not unreasonable or otherwise unlawful. With the 10 percent increase authorized by said Commission in *Increased Railway Rates, Fares, and Charges, 1942*, 248 I. C. C. 545, 565, 566, said fares were established on February 10, 1942, in interstate and intrastate commerce in Kentucky, on the general basis of 1.65 cents per mile.

(b) As shown by the attached affidavit of one Doris S. Whitnack, with accompanying tabulations, attached hereto and made part hereof, the 1943 rate of return for 10 Kentucky railroads, from net railway operating income prior to deduction of Federal income taxes, but after deduction of rent for leased railroads, was 17.50 percent of the book investments of said railroads, plus cash, materials and supplies, less accrued depreciation and accrued amortization of defense projects, as of December 31, 1943. The 1943 operating ratios for the same railroads were 58.20 and 57.79 percent for their passenger and freight [fol. 2325] services, respectively.

(c) As also shown by the said affidavit, the cost of the passenger service in coaches for 10 principal Kentucky railroads was about .80 of one cent per mile for 1943, as compared with the present intrastate fares upon the basis of 1.65 cents per mile, and the interstate level of fares upon the general basis of 2.2 cents

and 1.98 cents per passenger mile one-way and round trip, respectively.

(d) By reason of the aforesaid differences between the costs and fares per passenger mile in coaches for the said Kentucky railroads, under present conditions there is no advantage or preference nor disadvantage, prejudice, or discrimination to persons or localities in interstate commerce, as found by the Commission, which cannot be removed lawfully by reduction of the said interstate passenger coach fares to, from, and through Kentucky to the aforesaid level of the interstate fares.

There being no undue burden upon interstate or foreign commerce to, from, and between points in Kentucky from maintenance of passenger coach fares, in interstate or intrastate commerce, at the level of the Kentucky intra-
[fol. 2326] state coach fares, there is no Constitutional jurisdiction (Article I, Sec. 8, cl. 3, and the 10th Amendment) in the United States government to require increases of passenger coach fares in Kentucky, in intrastate commerce, above the level authorized by the Railroad Commission of Kentucky for intrastate commerce. The said corrected order of the Interstate Commerce Commission dated May 8, 1944, as described in paragraph 10 hereof, therefore transcends the Commissions constitutional or statutory powers, and is unlawful, void and of no effect.

18. In said report of March 25, 1944, mentioned in paragraph 8 hereof, the Interstate Commerce Commission erred, as a matter of law, in its determinations with respect to undue advantage or preference to persons and localities in intrastate commerce and undue disadvantages or prejudices to persons or localities in interstate commerce, in that part of said report subtitled "Undue advantage, preference, or prejudice". The mere existence of a disparity in rates between intrastate and interstate commerce, for substantially the same service on trains available to both interstate and intrastate passengers, does not justify the conclusion that any advantage or preference to persons or localities in intrastate commerce or disadvantage or prejudice to persons or localities in inter-
[fol. 2327] state commerce is undue or unreasonable. The said corrected order of May 8, 1944, mentioned in para-

graph 10 hereof, having been based upon error of law, therefore transcends the Commission's constitutional and statutory powers, and is unlawful, void, and of no effect.

19. In said report of March 25, 1944, mentioned in paragraph 8 hereof, the Interstate Commerce Commission erred, as a matter of law, in its determination with respect to discrimination by the intrastate fares against interstate or foreign commerce, in that part of the report subtitled "Unjust discrimination".

(a) The statements in said part of the report were with respect to discriminations against persons or localities, and not with respect to revenue discrimination, if any there be, against interstate or foreign commerce.

(b) The statements in said part of the report are mere reportorial descriptions of the evidence consisting of the opinions of the railroad respondents in the proceedings before the Commission and of the witnesses on their behalf, and do not constitute findings of basic fact.

[fol. 2328] (c) The statements in said part of the report do not show that any discrimination causes any result which is undue, unreasonable or unjust.

The said corrected order May 8, 1944, mentioned in paragraph 10 hereof, having been based upon error of law, therefore transcends the Commission's constitutional and statutory powers, and is unlawful, void, and of no effect.

20. The Interstate Commerce Commission erred, as a matter of law, in its sixth enumerated finding that maintenance of intrastate fares in the State of Kentucky on a lower level than the corresponding interstate fares causes and will cause undue and unreasonable advantage to and preference of persons in intrastate commerce, undue and unreasonable disadvantages to and prejudice against persons in interstate commerce, and undue, unreasonable, and unjust discrimination against interstate commerce.

(a) Said finding is in violation of the Tenth Amendment to the United States Constitution, for the reason that the power is reserved to said State to determine whether intrastate fares, lower than correspond-

ing interstate fares, are reasonable or unreasonable for intrastate commerce.

[fol. 2329] (b) Said finding is erroneous, as a matter of law, for the reason that the Commission failed to find that said advantage or preference from the aforesaid intrastate fares, or disadvantage or prejudice from the interstate fares, if any there be, causes any result which is undue or unreasonable as between any persons or localities in intrastate commerce on the one hand, and persons or localities in interstate or foreign commerce on the other hand.

(c) Said finding with respect to discrimination against interstate commerce, if any there be, is based upon the error of law that the Commission may require equally proportionate profits for railroads from intrastate and interstate commerce. Said finding violates the Tenth Amendment to the United States Constitution which reserves to said State the power of determining the reasonableness of the remuneration from intrastate fares within said State.

The said corrected order of May 8, 1944, having been based upon errors of law, therefore transcends the Commission's constitutional and statutory powers, and is unreasonable, void, and of no effect.

[fol. 2330] 21. In said report of March 25, 1944, mentioned in paragraph 8 hereof, the Interstate Commerce Commission erred, as a matter of law, in its first enumerated finding that the present basis of passenger coach fares, in interstate commerce, to, from, and through Kentucky is just and reasonable, for the reason that such conclusion is not in accordance with the requirements of section 15a of the Interstate Commerce Act.

(a) The Commission failed or refused to be governed by the effects of the increases of fares, over the level in effect on September 15, 1942, upon the movement of traffic by Kentucky railroads under normal or peacetimes conditions as described in paragraph 11(c) hereof, but instead based its decision upon changed wartime economic conditions which permitted the increases of fares.

(b) In said report the Commission made statements with respect to the endeavor of the railroads to discourage unnecessary travel in cooperation with the Office of Defense Transportation, to avoid the rationing of passenger travel which would tend to be encouraged by reduction in standard passenger fares. In contradiction thereof, however, the Commission found that passenger coach revenues of all Class I [fol. 2331] railroads in the southern region increased 128.5 percent in the first 10 months of 1943 as compared with the corresponding period for 1942, and also found (finding No. 5) that the revenues of the Kentucky railroads under the lower Kentucky intrastate fares are less by at least $500,000 per annum than said revenues would be if those intrastate fares were increased to the level of the corresponding interstate fares.

(c) The Commission failed or refused to consider "the need, in the public interest, of adequate and efficient transportation service at the lowest cost consistent with the furnishing of such service", as required by Section 15(a) of the Interstate Commerce Act. The data in paragraph 11(c) hereof indicates by approximation that in 1942 such unit cost of passenger service in coaches was about 1.25 cents per passenger mile as compared with the Kentucky intrastate rate of 1.65 cents and the interstate rate of 2.2 cents per mile (revenue per coach mile—52.02¢, multiplied by ratio of passenger service expenses to revenues—.74, divided by passenger miles per coach mile—30.85, equals 1.25).

[fol. 2332] (d) The Commission erroneously considered the need of added revenue by Kentucky railroads for the purpose of recouping for passenger service deficits from 1936 to 1941, inclusive; and failed or refused to consider that the Commission had previously established freight rate levels for the purpose of supporting the passenger service and compensating for such deficits, as mentioned in paragraph 16(b) hereof, which support factor in freight rates has been multiplied by the wartime increase of freight traffic.

(e) In derogation of the requirements of said section 15(a), the Commission held that " the most helpful evidence in determining the reasonableness of rates or fares is comparison with other rates or fares for like services'. In making such a holding the Commission erred as a matter of law.

The said corrected order of May 8, 1944, mentioned in paragraph 10 hereof, having been based upon errors of law, therefore transcends the Commission's constitutional and statutory powers, and is unlawful, void, and of no effect.

22. Said corrected order of May 8, 1944, mentioned in paragraph 10 hereof, is unlawful for the reason that the [fol. 2333] minimum fares required by said order for intrastate coach transportation in Kentucky were not established upon the general basis of the minimum reasonable fares for interstate transportation to, from, and through Kentucky. Said order requires that the said minimum intrastate fares be established upon the general basis prescribed by the Interstate Commerce Commission for maximum reasonable fares for interstate transportation of passengers in coaches to, from, and through Kentucky.

23. By said report of March 25, 1944, and the orders of May 8, 1944 mentioned in paragraphs 8, 9, and 10 hereof, the Interstate Commerce Commission has failed to recognize, as a consideration justifying the maintenance of the intrastate passenger fares at a level lower than the interstate fares, that in denying increases of intrastate rates, fares and charges over those in effect on September 15, 1942, the Railroad Commission of Kentucky was acting in aid of the effective prosecution of the war in accordance with the policy of Congress as expressed in the said Stabilization Act of October 2, 1942, and as requested of the Railroad Commission by the President in said Executive Order 9328 as set forth in paragraph 3 hereof. The said report and orders of the Interstate Commerce Com- [fol. 2334] mission therefore interfere with the cooperative efforts of the Railroad Commission of Kentucky to aid in the effective prosecution of the war, contrary to the intention of Congress. The said corrected order of May 8, 1944, having been issued contrary to the intentions

and desires of Congress transcends the Commission's constitutional or statutory powers, and is unlawful, void, and of no effect.

24. Unless said corrected order of May 8, 1944, mentioned in paragraph 10 hereof, is restrained and permanently enjoined and set aside, your petitioners will be caused great and substantial injury in the performance of their duties under the Stabilization legislation.

(a) The increased fares will add to the cost of living and will be inflationary to the detriment generally of the wartime program to stabilize prices, rents, and wages.

(b) Common carriers and public utilities will be encouraged to make inflationary increases of intrastate rates and to take advantage of wartime conditions to make excessive and unprecedented profits.

(c) State and municipal regulatory agencies will be discouraged from cooperation in the wartime stabilization program to the end of maintaining rates, fares, and charges in intrastate commerce, in effect in Sep- [fol. 2335] tember 15, 1942, which are less than those applicable to interstate commerce, which action may be overruled by the Interstate Commerce Commission to conform intrastate rates, fares, and charges to the interstate levels.

25. Plaintiff herein has no adequate remedy at law. Wherefore, your petitioner says:

First: That his petition be heard by a three judge court at the earliest available date, and that the constitutional and judicial matters be tried de novo with respect to the allegations of paragraph 17 hereof.

Second: That pending the final hearing of this cause, the court issue an interlocutory injunction and restraint enjoining said railroads from complying with said corrected order of May 8, 1944, mentioned in paragraph 10 hereof.

Third: That upon final hearing the court adjudge, order, and decree that said corrected order of May 8, 1944, mentioned in paragraph 10 hereof, is and at all

times has been in violation of the Interstate Commerce Act by reason of the Commission's failure properly to interpret and apply its constitutional and statutory authority to protect interstate commerce from undue and unreasonable burdens from intrastate commerce, [fol. 2336] and its failure to accommodate the exercise of its powers to the Congressional policies embodied in the Emergency Price Control Act of 1942 and the Stabilization Act of October 2, 1942; and that said corrected order is and has been beyond the lawful authority of the Interstate Commerce Commission, and wholly null and void; and that said corrected order be perpetually set aside and annulled, and the enforcement thereof perpetually enjoined.

Fourth: That the court grant to your petitioner such other relief as may be proper in the premises.

Respectfully submitted, Fred M. Vinson, Director of the Office of Economic Stabilization, by Chester Bowles, Price Administrator of the Office of Price Administration; Richard H. Field, General Counsel, Office of Price Administration; David F. Cavers, Assistant General Counsel, Office of Price [fol. 2337] Administration; Bernard M. Fitzgerald, Transportation Counsel, Transportation and Public Utilities Division, Office of Price Administration; M. D. Miller, Attorney, Office of Price Administration, 5319 Federal Office Building No. 1, 2nd and D Streets, S. W., Washington 25, D. C.

[fol. 2338] *Duly sworn to by M. D. Miller. Jurat omitted in printing.*

(Complaints similar in form and intent, omitted in printing, were filed in Cases No. 706 and 707.)

[fol. 2339] DISTRICT OF COLUMBIA:

AFFIDAVIT OF DORIS S. WHITNACK

Before me, a notary public in and for the District of Columbia, personally appeared Doris S. Whitnack, who being by me first duly sworn deposes and on oath says:

1. That she is a resident of the District of Columbia and since July 1941 has been employed as an Economist with the Transportation Branch of the Transportation and Public Utilities Division of the Office of Price Administration, and for about four years has had experience in economics and statistical work involving use and examination of the statistical and accounting reports filed by railroads with the Interstate Commerce Commission.

2. That on September 9, 1943, she testified at the hearing in Frankfort, Kentucky, in the proceeding before the Interstate Commerce Commission in No. 29000, *Kentucky Intrastate Coach Fares*, giving evidence relating to Exhibits Nos. 12 to 17, inclusive, in that proceeding.

3. That she has prepared the Tables I, II, III, attached hereto, and from the data set forth in the 1943 annual reports of the railroads named in said tables, filed by said railroads with the Interstate Commerce Commission; [fol. 2340] that she has prepared Table IV and the graph attached thereto from the monthly reports of the Bureau of Transport Economics and Statistics of the Interstate Commerce Commission; and she states that the data and computations in said tables are true and correct to the best of her knowledge, information, and belief.

4. That the 1943 rate of return for the ten Kentucky railroads, named in Table I attached hereto, from total 1943 net railway operating income of said railroads before Federal income taxes, but after deduction of rents for leased road, was 17.50 percent of a total of said railroads' book investments, plus cash, materials and supplies, less accrued depreciation and amortization of defense projects applicable to said book investments, as of December 31, 1943.

5. That the 1943 operation ratios for the ten Kentucky railroads, named in Table II attached hereto, were 58.20

percent and 57.79 percent for their passenger and freight services, respectively.

6. That during 1943, the average cost of the passenger service in coaches by seven principal Kentucky Class I railroads, named in Table III attached hereto, was about .80 of 1 cent per mile.

[fol. 2341] 7. That the figures set forth in Table IV are truly represented by the graph attached hereto.

(S.) Doris S. Whitnack.

Sworn to and subscribed before me this 30th day of June, 1944. (Signed) Eugene R. Wood, Sr., Notary Public. My commission expires Nov. 30, 1946.

[fol. 2342]

Table I

Rates of Return

Class I Railroads Operating in Kentucky

Railroad (1)	Rate Base: Plaintiff's Base as of Dec. 31, 1943 (2)	Rate Base: Railroads' Base as of Dec. 31, 1943 (3)	Prior to Deduction of Federal Income Taxes: Net Railway Operating Income 1943 (4)	Prior to Deduction of Federal Income Taxes: Net Railway Operating Income Less Rent for Leased Roads 1943 (5)	1943 Rate of Return on: Plaintiff's Base (6)	1943 Rate of Return on: Railroads' Base (7)
1. *Chesapeake and Ohio Ry. Co.	$510,242,210	$645,145,090	$86,159,840	$86,110,171	16.88%	13.36%
2. Clinchfield RR Co.	9,652,128	75,701,566	5,928,597	3,755,364	38.91	7.83
3. *Cincinnati, New Orleans and Texas Pacific Ry. Co.	57,031,383	93,923,513	15,434,820	13,697,398	24.02	16.43
4. *Gulf, Mobile and Ohio RR Co.	70,131,656	95,033,408	8,725,835	8,235,582	11.74	9.18
5. *Illinois Central RR Co.	273,762,320	626,669,967	58,105,152	57,332,199	20.94	9.27
6. *Louisville and Nashville RR Co.	412,330,847	536,070,042	81,789,976	81,488,285	19.76	15.26
7. *Nashville, Chattanooga and St. Louis Ry.	64,670,971	78,706,348	13,179,662	12,375,246	20.07	16.75
8. Norfolk and Western Ry. Co.	448,015,775	568,029,642	64,637,600	64,637,360	14.43	11.37
9. *Southern Railway Co.	536,591,565	664,768,923	92,367,757	89,371,657	16 66	13.89
10. Tennessee Central Railway Co.	8,477,166	10,628,334	990,869	974,760	11.50	9.41
Totals:						
* Seven Principal Railroads in Kentucky	$1,921,760,952	$2,740,317,291	$355,763,042	$348,610,538	18.14%	12.98%
Ten Railroads Above	2,387,906,021	3,394,676,833	427,320,108	417,978,022	17.50	12.59

Sources: Annual Report to the Interstate Commerce Commission for the Year Ended December 31, 1943, for each carrier named.
Col. 2—Schedules 200A and 200L, p. 200–201; Accounts 701, 702, 702-½A, 702-½B, 708, 716 less Accounts 775-½, 776, 776-½.
Col. 3—Schedule 211N, p. 207, Columns C and D; Plus Accts. 708, and 716, Schedule 200A, p. 200.
Col. 4—Schedule 300I Line 80 plus line 87, p. 301A.
Col. 5—Column 4; less Acct. 542, Schedule 300I, p. 301A.
Col. 6—Column 5 divided by Column 2.
Col. 7—Column 4 divided by Column 3.

(Here follows 1 Paster, side folio 2343)

fol. 2343]

Table II

Revenues, Expenses and Service Operating Ratios
Class I Railroads Operating in Kentucky
1943

Railroad (1)	Total Operating			Assigned to Freight Service			Assigned to Passenger Service		
	Revenues (2)	Expenses (3)	Operating Ratio (4)	Revenues (5)	Expenses (6)	Operating Ratio (7)	Revenues (8)	Expenses (9)	Operating Ratio (10)
1. *Chesapeake & Ohio Ry. Co.	$208,512,535	$115,645,265	55.17%	$182,835,859	$95,578,519	52.28%	$25,676,676	$19,466,746	75.81%
2. Clinchfield RR Co.	12,796,775	6,201,834	48.46	12,583,264	5,963,934	47.40	213,511	237,900	111.42
3. *Cincinnati, New Orleans & Texas Pacific Ry. Co.	37,213,864	19,763,905	53.11	28,525,076	15,437,000	54.12	8,688,788	4,326,905	49.80
4. *Gulf, Mobile & Ohio RR Co.	37,858,695	24,720,015	65.30	34,634,239	22,029,844	63.61	3,213,098	2,678,577	83.36
5. *Illinois Central RR Co.	213,010,308	137,145,462	64.38	170,473,069	107,819,079	63.25	42,537,239	29,326,383	68.94
6. *Louisville & Nashville RR Co.	208,799,302	118,152,434	56.59	154,592,230	90,458,542	58.51	54,207,072	27,693,892	51.09
7. *Nashville, Chattanooga & St. Louis Ry.	42,284,020	26,459,060	62.57	31,695,829	20,489,948	64.65	10,588,191	5,969,112	56.38
8. Norfolk & Western Ry. Co.	150,164,921	84,395,641	56.20	130,778,189	72,029,854	55.08	19,386,732	12,365,787	63.78
9. *Southern Railway Co.	245,532,051	136,604,153	55.64	176,593,635	102,959,676	58.30	68,938,416	33,644,477	48.80
10. Tennessee Central Railway Co.	4,841,515	3,435,703	70.96	4,052,015	2,821,194	69.62	789,500	614,609	77.85
Totals:									
* 7 Principal Railroads in Kentucky	$993,210,775	$577,890,294	58.18%	$779,349,937	$454,772,608	58.35%	$213,849,480	$123,106,092	57.57%
10 Railroads Above	1,161,013,986	671,923,472	57.87	926,763,405	535,587,590	57.79	234,239,223	136,324,388	58.20

Sources: Annual Report to the Interstate Commerce Commission for the Year Ended December 31, 1943, for each carrier named.
Cols. 2, 5, and 8—Schedule 310, p. 303.
Cols. 3, 4, 6, 7, 9, and 10—Schedule 320, p. 312-313.

[fol. 2344]

Table III

Estimate of Unit Cost per Coach Passenger-Mile

Seven Principal Class I Railroads Operating in Kentucky
1943

1	2	3	4	5	6	7	8
Railroad	Expenses Assigned to Passenger Service	Passenger Car-Miles	Passenger-Miles in Coaches	Passenger-Coach-Miles	Expenses per Passenger Car-Mile or Coach Mile (cents)	Coach Passenger Miles per Coach Car-Mile	Expenses per Passenger-Mile in Coaches (cents)
1. Chesapeake & Ohio	$19,466,746	57,483,871	804,532,382	23,490,670	33.86¢	24.25	.99¢
2. Cincinnati, New Orleans & Texas Pacific	4,326,905	16,726,936	265,759,691	6,474,356	25.87	41.05	.63
3. Gulf, Mobile, & Ohio	2,678,577	8,147,851	94,729,819	3,567,029	32.87	26.56	1.24
4. Illinois Central & Yazoo & Miss. Valley	33,504,793	109,585,356	1,115,980,907	46,190,657	30.57	24.16	1.27
5. Louisville & Nashville	27,693,892	100,426,795	1,800,542,707	39,227,465	27.58	45.90	.60
6. Nashville, Chattanooga & St. Louis	5,969,112	21,575,993	314,090,440	7,126,584	27.67	44.07	.63
7. Southern	33,644,477	120,411,468	1,916,816,426	47,278,298	27.94	40.54	.69
8. Total	$127,284,502	434,358,270	6,312,452,372	173,355,059	29.30¢	36.41	.80¢

Sources: Reports of the carriers indicated to the Interstate Commerce Commission.
Col. (2)—Annual Report 1943 pp. 212-213.
Col. (3)—Annual Report 1943 p. 508, Col. D Lines 42, 43, 44, 45, 46 and 47.
Col. (4)—APT Report, Analysis of Passenger Traffic, for December 1943.
Col. (5)—Annual Report 1943, p. 508 Col. D Lines 42 and 50% of Line 47.
Col. (6)—Col. (2) divided by Col. (3)
Col. (7)—Col. (4) divided by Col. (5)
Col. (8)—Col. (6) divided by Col. (7)

[fol. 2345]

Table IV

Operating Expenses and Net Railway Operating Income Before and After Federal Income Taxes, by Months June, 1942–1943 Through February, 1944

Class I Railways in the Southern Region

	Railway Operating Expenses	Net Railway Operating Income After All Taxes	Federal Income Taxes	Net Railway Operating Income Before Federal Income Taxes
June				
1943	$60,463,037	$15,713,303	$21,071,532	$36,784,835
1942	50,339,930	17,443,165	12,844,708	30,287,873
% Change from previous month	20.1%	−9.9%	64.0%	21.5%
July				
1943	$61,903,735	$14,289,639	$20,337,243	$34,626,882
1942	51,584,250	16,262,199	15,010,460	31,272,659
% Change from previous month	20.0%	−12.1%	35.5%	10.7%
August				
1943	$61,805,523	$15,825,768	$22,233,574	$38,059,342
1942	52,892,619	17,095,378	16,648,887	33,744,265
% Change from previous month	16.7%	−7.4%	33.5%	12.8%
September				
1943	$61,999,157	$15,341,282	$20,558,930	$35,900,212
1942	53,086,481	20,068,296	15,562,272	35,630,568
% Change from previous month	16.8%	−23.6%	32.1%	0.8%
October				
1943	$64,078,415	$14,855,619	$19,915,085	$34,770,704
1942	56,896,250	21,553,216	14,830,113	36,383,329
% Change from previous month	12.6%	−31.1%	34.3%	−4.4%
November				
1943	$62,724,150	$15,308,721	$20,191,286	$35,500,007
1942	55,442,490	23,089,442	13,527,971	36,617,413
% Change from previous month	13.1%	−33.7%	49.3%	−3.1%

[fol. 2346]

December				
1943	$79,033,667	$11,035,492	$14,936,289	$25,971,781
1942	62,355,103	28,578,717	4,804,387	33,383,104
% Change from previous month	26.7%	−61.4%	210.9%	−22.2%
January				
1944	$67,507,498	$14,411,720	$18,823,172	$33,234,892
1943	59,028,719	18,231,591	17,863,590	36,095,191
% Change from previous month	14.5%	−21.0%	5.4%	−7.9%

Table IV

Operating Expenses and Net Railway Operating Income Before and After Federal Income Taxes, by Months June, 1942–1943 Through February, 1944

Class I Railways in the Southern Region

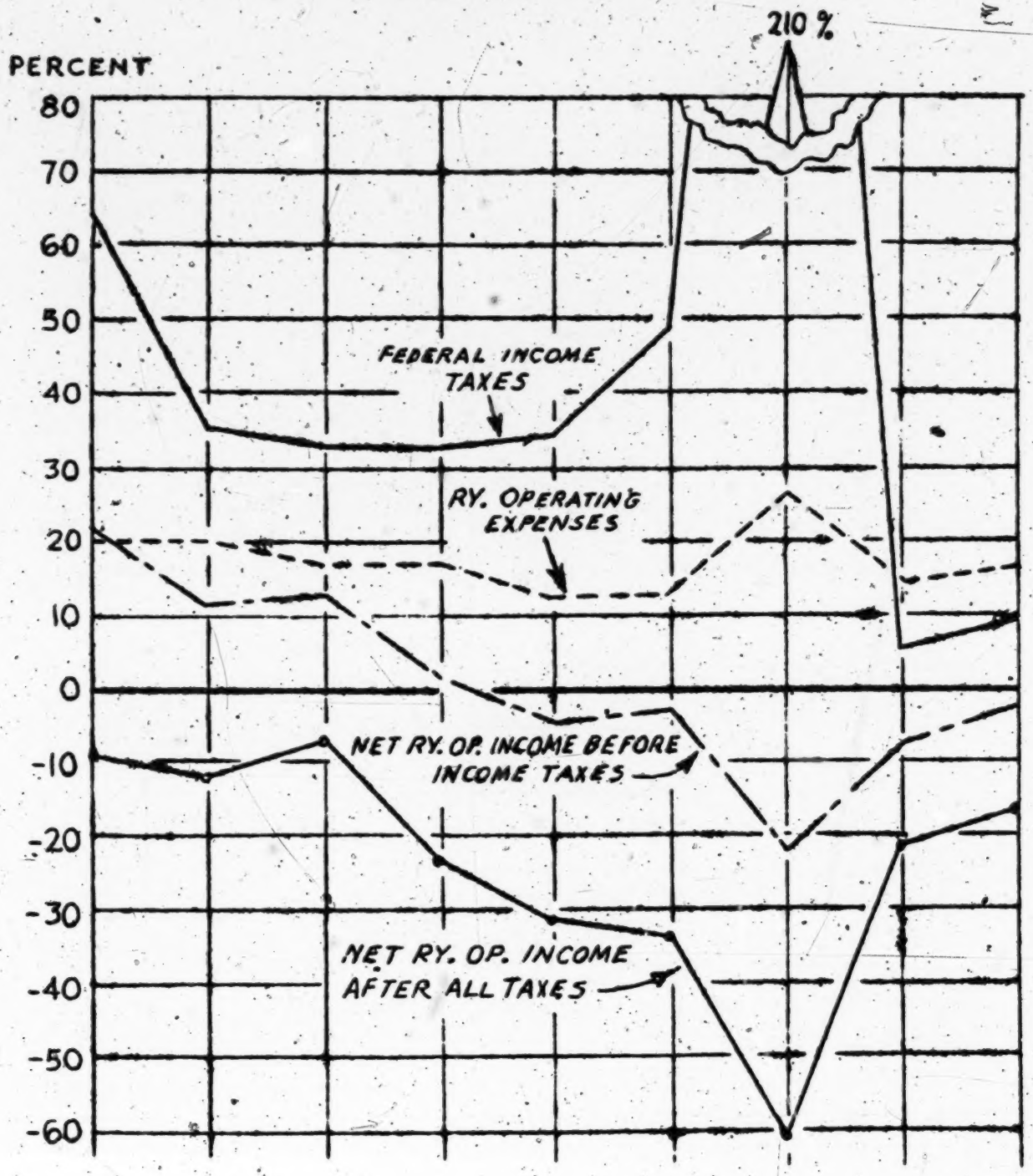
	Railway Operating Expenses	Net Railway Operating Income After All Taxes	Federal Income Taxes	Net Railway Operating Income Before Federal Income Taxes
February				
1944	$65,716,851	$15,555,855	$20,512,635	$36,068,490
1943	56,215,003	18,566,605	18,775,907	37,342,512
% Change from previous month	16.9%	−16.2%	9.2%	−3.4%

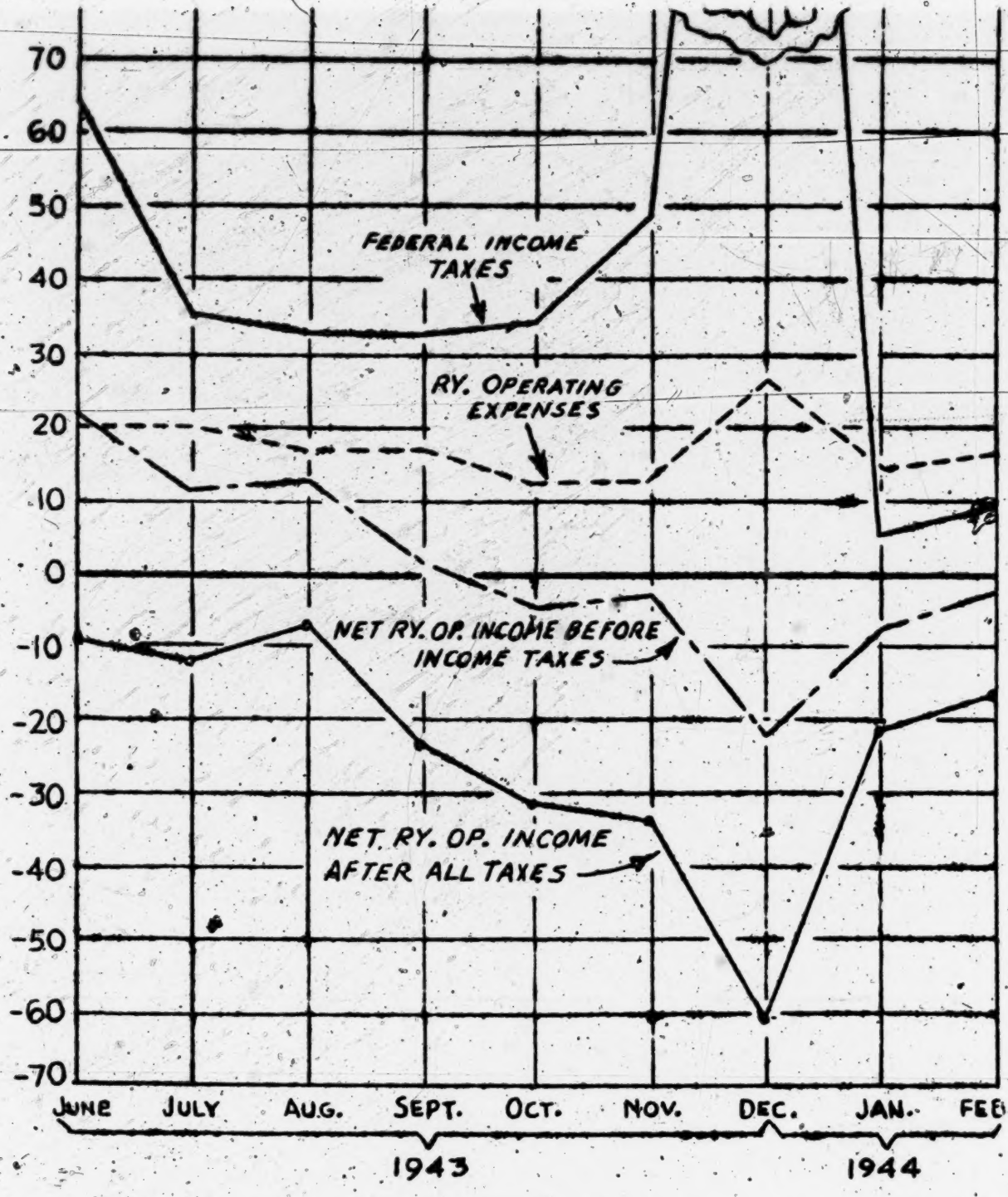
Source: Operating Revenues and Operating Expenses of Class I Steam Railways in the United States, Interstate Commerce Commission, Bureau of Transport Economics and Statistics, Statement No. M–100, for the Months of June, 1943 Through February, 1944.

(Here follows 1 photolithograph, side folio 2347.)

CHANGE FROM CORRESPONDING MONTH IN THE PREVIOUS YEAR EXPENSES, TAXES AND OPERATING REVENUE OF CLASS I RAILROADS IN SOUTHERN REGION

JUNE 1943 - FEB. 1944





SOURCE: Monthly Reports of ICC, Bureau of Transport Economics and Statistics

2347

20732-644

[fol. 2348] IN UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF KENTUCKY

Civil Action No. 708

COMMONWEALTH OF KENTUCKY, AND RAILROAD COMMISSION OF KENTUCKY, Plaintiffs,

v.

UNITED STATES OF AMERICA, Defendant

ORDER GRANTING INTERVENTION

The foregoing petition of Fred M. Vinson, Economic Stabilization Director, by Chester Bowles, Price Administrator, to intervene as Plaintiff in the above stated cause is granted.

This 6th day of July, 1944.

Shackelford Miller, Jr., District Judge.

(Similar orders, omitted in printing, were entered in Cases No. 706 and 707.)

[fol. 2349] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

No. 708

COMMONWEALTH OF KENTUCKY, AND RAILROAD COMMISSION OF KENTUCKY, Plaintiffs,

vs.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, Defendants

ANSWER OF THE UNITED STATES OF AMERICA—Filed July 7, 1944

Now comes the United States of America, a defendant herein, by counsel, and in answer to the complaint says:

I

Fred M. Vinson, Economic Stabilization Director, by Chester Bowles, Price Administrator, has filed a motion to intervene as a plaintiff in this case and has also filed

an intervening complaint seeking to have the order of the Interstate Commerce Commission here involved set aside.

III

A situation is thus presented where one Government agency is seeking to intervene as a party plaintiff in this case and another Government agency, the Interstate Commerce Commission, is a defendant in the same case. Under these circumstances, and in view of the fact that both Government agencies will have an opportunity to present their respective position through their own counsel, the United States has determined to remain neutral in these proceedings in the District Court, without prejudice to its supporting the position of one or the other agency in any appeal which may be taken from the decree of this court.

[fol. 2350] III

Accordingly, the United States neither admits nor denies any of the allegations of the complaint of the above plaintiffs or the intervening complaint of the Economic Stabilization Director.

(S.) Eli H. Brown, III, United States Attorney;
(S.) Robert L. Pierce, Special Assistant to the Attorney General.

Certificate of Service

I hereby certify that a copy of the above answer of the United States has been served upon each of the following named counsel this 7th day of July, 1944:

Eldon S. Dummit, Esq.
Attorney General of Kentucky
State Capitol
Frankfort, Kentucky

M. B. Holifield, Esq.
Assistant Attorney General of Kentucky
State Capitol
Frankfort, Kentucky

Allen B. Crenshaw, Esq.
Interstate Commerce Commission
Washington 25, D. C.

Charles Clark, Esq.
Southern Railway System
Washington 13, D. C.
M. D. Miller, Esq.
Room 5319
Federal Office Building, No. 1
Washington 25, D. C.
Frank W. Gwathmey, Esq.
Shoreham Building
Washington, D. C.
E. D. Mohr, Esq.
Louisville & Nashville R. R.
Louisville, Kentucky
Eli H. Brown, III, United States Attorney.

[fol. 2351] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

Civil Action No. 708

COMMONWEALTH OF KENTUCKY, AND RAILROAD COMMISSION OF KENTUCKY, Plaintiffs,

v.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, Defendants

INTERVENTION OF INTERSTATE COMMERCE COMMISSION—Filed July 10, 1944

To the Honorable the Judges of Said Court:

In accordance with the provisions of section 212 of the Judicial Code, 36 Stat. L. 1150 (U. S. Code, Tit. 28, Sec. 45a), providing, in part, "that the Interstate Commerce Commission and any party or parties in interest to the proceeding before the Commission, in which an order or requirement is made, may appear as parties thereto of their own motion and as of right, and be represented by their counsel, in any suit wherein is involved the validity of such order or requirement," we hereby enter the appearance of the Interstate Commerce Commission as a

party defendant, and of ourselves as its counsel, in the above-entitled suit.

Interstate Commerce Commission. By: Daniel W. Knowlton, Chief Counsel; Allen Crenshaw, Attorney.

July 6, 1944.

[fol. 2352] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

Civil Action No. 708

COMMONWEALTH OF KENTUCKY, AND RAILROAD COMMISSION OF KENTUCKY, Plaintiffs,

v.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, Defendants

ANSWER OF INTERSTATE COMMERCE COMMISSION—Filed July 10, 1944

The Interstate Commerce Commission, hereinafter called the Commission, one of the defendants in the above-entitled action, now and at all times hereafter saving and reserving to itself all and all manner of benefit and advantage of exception to the many errors and insufficiencies in the plaintiffs' complaint contained, and in the complaint of intervenors, for answer thereunto or unto so much or such parts thereof as it is advised that it is material for it to answer, answers and says:

I

Answering the allegations of paragraphs I, II, III, IV, V, and VI of plaintiffs' complaint, the Commission admits court jurisdiction of the action herein and of the parties thereto.

II

The Commission admits that the plaintiffs herein have a legal right to maintain this action, and that intervenors are proper parties thereto.

III

Further answering other allegations of the complaints, the Commission alleges that proceedings, directly and im- [fol. 2353] mediately concerned in the orders herein involved, were instituted upon the filing of petitions in the Commission, by various railroads operating in the State of Kentucky, to wit: the Louisville and Nashville Railroad Company, The Chesapeake and Ohio Railroad Company, The Cincinnati, New Orleans and Texas Pacific Railway Company, the Gulf, Mobile and Ohio Railroad Company, the Illinois Central Railroad Company, The Nashville, Chattanooga & St. Louis Railway, and the Southern Railway Company, in July, 1943, complaining that intrastate coach passenger fares, to, from, and between points within the State of Kentucky, except as applied to and by the Gulf, Mobile and Ohio and Illinois Central Railroads, other than in instances where those railroads meet lower rates of competing lines, were unduly preferential of intrastate passengers, unduly prejudicial to interstate passengers, and unjustly discriminatory against interstate commerce, in violation of Section 13 (3) and (4) of the Interstate Commerce Act, seeking under Commission authority, to have such advantage, preference, prejudice, or discrimination removed, as might be found to exist, and to determine what fares and charges, if any, or what maximum or minimum, or maximum and minimum fares and charges should be prescribed, to remove such advantage, preference, prejudice, or discrimination; said petitions were given Docket No. MG-29000 and hearings were held thereon before an examiner of the Commission at Frankfort, Ky., on September 8 and 9, 1943, at which time evidence was received as submitted by the various parties interested therein, including plaintiffs herein, and thereafter the several parties to the proceedings filed briefs with, and orally argued before the Commission, matters involved in said proceedings, following which the Commission entered its report of March 25, 1944; thereafter plaintiffs filed petition for reopening, [fol. 2354] reargument, and reconsideration of the report of March 25, 1944, which petition was denied by order dated May 8, 1944; under corrected order issued May 24, 1944, rail carrier respondents in the above proceedings were required to establish on or before July 1, 1944,

later extended to August 1, 1944, and to thereafter maintain and apply, passenger fares for intrastate transportation in Kentucky, and in the States of Alabama, North Carolina, and Tennessee, also involved in said proceedings under the same report and order, on a basis no lower than the passenger fares presently maintained and applied by the respective respondents, for like accommodations in interstate transportation to, from, and through the said states, and providing that the resulting aggregate charge, made by any of said respondents for intrastate transportation in any of the said states, shall not exceed the aggregate charge made for like accommodations for a like distance by the same respondents in interstate transportation to, from, or through such state."

The Commission further alleges that the proceedings, report, and orders here involved, indirectly and collaterally relate to previous consideration, decisions, and orders of the Commission, in respect to the determination of reasonable passenger fares in interstate commerce, particularly with reference to such fares in Southern Passenger Association territory, generally located east of the Mississippi River and south of the Ohio and Potomac Rivers, such consideration and decisions covering a period of many years prior to the report involved in this action, a summary of that previous consideration, and of reports and orders issued in connection therewith, being set forth in the Commission report of March 25, 1944, 258 I. C. C. 133, at pages 134, 135, 136, and 137, under the heading of "History of Rail Fares." Such interstate fares, so determined by the Commission as reason-
[fol. 2355] able, provide the basis of comparison, standard or relation to the intrastate fares here involved. Previous Commission consideration of such interstate fares discloses that passenger fares in said southern territory for many years, up to June 10, 1918, were generally 2.5 cents per mile in all classes of equipment, on which last-named date, the Director General of Railroads increased the fare to 3 cents per mile in all classes of equipment, which said increased fare remained in effect, except that from June 10 to November 30, 1918, an additional charge of 16⅔ percent of the one-way fare was assessed for travel in sleeping and parlor cars, until August 25, 1920, when fares generally were raised to 3.6 cents per

mile in all classes of equipment, plus a surcharge in sleeping and parlor cars; that during 1932 and 1933 certain rail carriers operating in southern territory experimented with lower fares, in attempts to attract passenger business in competition with private automobiles and busses, as set forth in said report of March 25, 1944, at pages 134 and 135; the said higher passenger fares of 3.6 cents per mile, established August 26, 1920, with exception of the experimental lower fares established by certain rail carriers, remained in effect until February 28, 1936, when the Commission by its report in *Passenger Fares and Surcharges*, 214 I.C.C. 174, reviewed railroad passenger fares throughout the nation, found the basic fares to be unreasonable, and prescribed maximum reasonable fares of 2 cents per mile, one-way and round-trip in coaches, and 3 cents per mile one-way and round-trip in Pullman cars, without prejudice to the maintenance of lower fares in coaches or Pullmans, and finding that the Pullman surcharge was unreasonable, requiring the same to be canceled, and finding that the existing experimental fares in southern territory were not unreasonable or otherwise unlawful; that on November 15, 1937 carriers maintaining the experimental coach fares of 1.5 cents, in-
[fol. 2356] creased that fare to 2 cents per mile, but restored the 1.5-cent fare on January 15, 1939, with certain southern lines, including Illinois Central, Mobile and Ohio, St. Louis-San Francisco, and Norfolk and Western Railway, which said lines retained the 2-cent basis, with some exceptions in meeting competition of other lines.

In a proceeding designated as Ex Parte 148, instituted at the instance of the railroads, the Commission by order of January 21, 1942, authorized a 10 percent increase in passenger fares, held to be reasonable and otherwise lawful, and necessary to enable the rail carriers to render adequate and efficient transportation service during the national emergency, the said report being entitled *Increased Railway Rates, Fares, and Charges, 1942*, 248 I.C.C. 545, 565, 566. Under the 10 percent increase of passenger fares the reestablished coach fares of 1.5 cents, which had remained in effect until February 10, 1942, became 1.65 cents, and fares of 2 cents became 2.2 cents and fares of 3 cents became 3.3 cents, with round-trip fares modified to reflect the increases in the one-way fares, such increased fares upon various subsequent dates having also become effective on intrastate traffic in all states. Upon petition of rail carriers in south-

ern territory filed July 14, 1942, the Commission authorized such carriers to increase the lower interstate passenger fares in coaches in that territory to 2.2 cents a mile, the order being entered on August 1, 1942, and such increased fares were published to become effective October 1, 1942, and have since remained in effect on interstate traffic. Thereafter, with the approval of the regulatory authorities of the States of Florida, Georgia, Louisiana, Mississippi, Virginia, and South Carolina, the intrastate one-way and round-trip coach fares and the round-trip fares in sleeping and parlor cars, were increased to the respective levels of of the corresponding interstate fares, and the regulatory authorities of Alabama, North Carolina, Tennessee and Kentucky declined to authorize the increases, sought by the [fol. 2357] rail carriers, in one-way and round-trip coach fares, and Alabama and Tennessee also declined to authorize increase in the round-trip fares in sleeping and parlor cars. The refusal of the States of Alabama, North Carolina, Tennessee, and Kentucky to authorize the increases of passenger fares to the level of the interstate fares, was the basis of petitions of rail carriers, in the proceedings herein involved, that the resulting differential in favor of intrastate fares, as compared to the interstate fares, results in a violation of Section 13 (3) and (4) of the Act.

The report of March 25, 1944, embraced, considered, and decided the subject of proceedings in No. MC-29000, *Kentucky Intrastate Fares,* and also No. MC-29036, *North Carolina Intrastate Coach Fares,* No. MC-29037, *Tennessee Intrastate Fares,* and No. MC-28963, *Alabama Intrastate Fares,* and found, (1) that interstate one-way and round-trip coach fares in effect to, from, and through points in Alabama, Kentucky, North Carolina, and Tennessee, and interstate round-trip fares in sleeping and parlor cars in effect to, from, and through points in Alabama and Tennessee are just and reasonable, (2) that intrastate one-way and round-trip coach fares in Alabama, Kentucky, North Carolina, and Tennessee, with certain designated exceptions, and intrastate round-trip fares in sleeping and parlor cars in Alabama and Tennessee, are lower than the corresponding fares applicable interstate, and intrastate generally throughout southern territory, except as to the states named, (3) that conditions affecting the transporation of passengers in coaches in the said four states, and in sleeping and parlor cars in Alabama and Tennessee, intrastate, on the

one hand, and interstate to, from and through those respective states, on the other, are substantially similar, (4) that interstate passengers in these states travel in the same trains, and generally in the same cars with intrastate passengers, but are forced to pay higher fares than the intrastate passengers for like services, to the undue and un-
[fol. 2358] reasonable advantage and preference of intrastate passengers, and the undue and unreasonable disadvantage and prejudice of interstate passengers, (5) that respondent rail carriers, revenues under the lower intrastate fares, are less by at least $725,000 per annum in Alabama, $500,000 in Kentucky, $525,000 in North Carolina, and $525,000 in Tennessee, than they would be if those fares were increased to the level of the corresponding interstate fares, and traffic moving under these lower intrastate fares is not contributing its fair share of the revenues, required to enable respondents to render adequate and efficient transportation service, and (6) that the maintenance of such intrastate fares, to the extent that they are lower than the corresponding interstate fares, causes and will cause undue and unreasonable advantage to and preference of persons in intrastate commerce, undue and unreasonable disadvantage to and prejudice against persons in interstate commerce, and undue, unreasonable and unjust discriminations against interstate commerce, and that this unlawfulness should be removed by increasing the said intrastate fares in the respective states to the level of the corresponding interstate fares contemporaneously maintained by respondent carriers, to, from, and through such states, provided that the aggregate charge made by any of respondents for the intrastate transportation in any of the states, shall not exceed the aggregate charge made for like accommodations for a like distance by the same respondents for interstate transportation to, from, or through such state. These findings were made without prejudice to the right of authorities of the affected states, or of any interstate party, to apply for modification thereof as to any specific interstate fare, on the ground that such fare is not related to interstate fares in such a way as to contravene the provisions of the Interstate Commerce Act.

[fol. 2359] IV

The Commission further alleges that the findings and conclusions in said report of March 25, 1944, were and are, and

that each of them was and is, fully supported and justified by the evidence submitted in said proceedings as aforesaid, and that, in making said report, it considered and weighed carefully, in the light of its own knowledge and experience, each fact, circumstance and condition called to its attention on behalf of the parties to the said proceedings by their respective counsel.

The Commission further alleges that said report and order, above referred to, was not made or entered either arbitrarily or unjustly, or without proof or contrary to the relevant evidence, or without evidence to support it, that in making said report and order the Commission did not exceed the authority conferred upon it by law, and denies each of and all of the allegations to the contrary contained in the complaints.

Except as herein expressly admitted, the Commission denies the truth of each of and all of the allegations contained in the complaints, insofar as they conflict either with the allegations herein, or with either the statements or conclusions of fact included in the said report of March 25, 1944, above referred to.

V

The Commission specifically denies the allegation contained in paragraphs XXV, XXXIII, and XXXV.

All of which matters and things the Commission is ready to aver, maintain, and prove as this Honorable Court shall direct, and hereby prays that said complaint be dismissed.

Interstate Commerce Commission, by Allen Crenshaw, Attorney; Daniel W. Knowlton, Chief Counsel, of Counsel.

[fol. 2360] *Duly sworn to by Claude R. Porter. Jurat omitted in printing.*

[fol. 2361] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

Civil Action No. 708

COMMONWEALTH OF KENTUCKY, and RAILROAD COMMISSION OF KENTUCKY

v.

UNITED STATES OF AMERICA, Defendant

MOTION FOR LEAVE TO INTERVENE—Filed July 12, 1944

Come now, under and by virtue of Title 28, U. S. C. Section 45a, The Chesapeake and Ohio Railway Company, The Cincinnati, New Orleans and Texas Pacific Railway Company, Gulf, Mobile and Ohio Railroad Company, Illinois Central Railroad Company, Louisville and Nashville Railroad Company, The Nashville, Chattanooga & St. Louis Railway, and Southern Railway Company, and move the court for leave to appear and intervene in the above-stated case and to become parties defendant thereto in order to protect their rights involved in said case.

[fol. 2362] Each of said movants is and for some years has been a corporation engaged in operating a railroad within the State of Kentucky, and by its own rails or in connection with the rails of some one or more of the other movants engaged in operating a line of railroad between points within the State of Kentucky and points in other states within Southern territory; Southern territory is familiarly described and known as embracing those states lying south of the Ohio and Potomac Rivers and east of the Mississippi River;

And as such corporations each of said movants has operated and is now operating as a common carrier of passengers by railroad intrastate within the State of Kentucky and interstate within Southern territory; and as such has been and is subject to the provisions of the Act of Congress known as the Interstate Commerce Act;

And said movants, jointly and severally, are vitally interested in the subject matter of this complaint. They are the common carriers by railroad operating within the State of Kentucky upon whose petition the Interstate Commerce Commission instituted the investigation docketed

No. 29000 in which the report of March 25, 1944, and the orders of May 8, 1944, set out as exhibits C, A, and D to the complaint herein, respectively, were made and issued.

[fol. 2363] And each of said movants desires to here appear and intervene on behalf of defendant, United States of America, and to answer the bill of complaint and participate in the trial thereof as a party defendant.

E. A. Smith, Illinois Central System, 135 East 11th Place, Chicago 5, Ill.; H. L. Walker, Chesapeake & Ohio Ry. Co., Richmond 10, Va.; W. L. Grubbs, Louisville & Nashville R. R. Co., Louisville 1, Ky.; Y. D. Lott, Jr., Gulf, Mobile & Ohio R. R. Co., Mobile 5, Ala.; F. W. Gwathmey, 1110 Shoreham Bldg., Washington 5, D. C.; Charles Clark, Southern Railway Office Bldg., 15th & K Streets, N. W., Washington 13, D. C., Attorneys for Movants.

[fols. 2364-2365] ORDER

The foregoing motion read and considered; let the same be filed; and it is further ordered that the motion be allowed and that the movants, and each of them, be and they are hereby made parties defendant in the above-entitled cause.

Shackelford Miller, Jr., United States District Judge.

This 12th day of July, 1944.

[fol. 2366] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

Civil Action No. 708

COMMONWEALTH OF KENTUCKY, and RAILROAD COMMISSION OF KENTUCKY, Plaintiffs

v.

UNITED STATES OF AMERICA, Defendant

ANSWER OF RAIL LINES, INTERVENING DEFENDANTS—Filed July 12, 1944

Come now, in due season, rail lines operating in the State of Kentucky, who are intervening defendants herein, and file this, their joint and several answer to the complaint

or petition herein filed by the Commonwealth of Kentucky and the Railroad Commission of Kentucky.

I

These intervening defendants hereby adopt the answer herein filed on behalf of Interstate Commerce Commission, an intervener in said cause, as their answer in the same manner and to the same extent as though each paragraph thereof were herein fully set out.

II

Further answering, these defendants specifically deny the averments in paragraphs XXIV, XXV, XXVI, XXVII, XXVIII, XXIX, XXX, XXXII, XXXIII, XXXIV and XXXV.

III

Further answering, these defendants deny the allegation in paragraph numbered XXXII, or any inference therein, of defects in the findings of the Interstate Commerce Commission therein referred to.

[fols. 2367-2368] Wherefore, having answered, these intervening defendants pray that the petition or complaint herein be dismissed.

E. A. Smith, Illinois Central Railroad Co., Chicago, Illinois; H. L. Walker, Chesapeake & Ohio Railway Co., Richmond, Va.; W. L. Grubbs, Louisville & Nashville R. R. Co., Louisville, Ky.; Y. D. Lott, Jr., Gulf, Mobile & Ohio Railroad, Mobile, Ala.; F. W. Gwathmey, 1110 Shoreham Bldg., Washington, D. C.; Charles Clark, Southern Railway Office Bldg., 15th & K Streets, N. W., Washington 13, D. C.

[fol. 2369] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

Civil Action No. 708

COMMONWEALTH OF KENTUCKY AND RAILROAD COMMISSION OF KENTUCKY Plaintiffs

vs.

UNITED STATES OF AMERICA Defendant

MOTION TO DISMISS—Filed July 17, 1944

Come now the plaintiffs, Commonwealth of Kentucky and Railroad Commission of Kentucky, and move the court to dismiss the answer of the intervening defendant, Interstate Commerce Commission, because said answer does not disclose that at the time it rendered its findings (4) and (6) any person or persons had filed a complaint before it as to undue or unreasonable advantage, preference or prejudice between him or her or them and some other person or persons in intrastate commerce on the one hand, and interstate or foreign commerce upon the other hand, who had a right to complain as to any existing advantage, preference or prejudice, and there was no substantial or any evidence before the Interstate Commerce Commission [fol. 2370] to support in whole or in part either finding (4) or (6), and that each of said findings is void. And further, because there was no substantial or any evidence before said Commission to support finding (6) in whole or in part, and said finding was void. And because without the valid findings of (4), (5) and (6), or some other finding or findings equivalent thereto that were valid, the Interstate Commerce Commission was without jurisdiction as to person or persons or matter in the controversy so as to enable it to issue the order as corrected or amended herein and of which order plaintiffs herein complain, and said order is void and unenforceable. And upon this motion plaintiffs pray the judgment of the Court.

Eldon S. Dummit, Attorney General of Kentucky, State Capitol, Frankfort, Kentucky. M. B. Holifield, Assistant Attorney General of Kentucky, State Capitol, Frankfort, Kentucky, Attorneys for Plaintiffs.

J. E. Marks, 145 E. High St. Lexington, Kentucky, Of Counsel.

[fol. 2371] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

No. 708 Civil

COMMONWEALTH OF KENTUCKY AND RAILROAD COMMISSION OF KENTUCKY Plaintiffs

v.

UNITED STATES OF AMERICA Defendant

MOTION TO DISMISS COMPLAINT OF FRED M. VINSON, DIRECTOR OF THE OFFICE OF ECONOMIC STABILIZATION—Filed July 17, 1944.

Come now, in due season, the railroad intervening defendants in the above-stated cause, and file this, their motion to dismiss the complaint of Fred M. Vinson, Director of the Office of Economic Stabilization, an intervening party plaintiff, upon the following grounds:

I

Said complaint of Director Vinson fails to state a claim upon which relief can be granted in this cause.

II

In the first paragraph of the prayer of the complaint of said Director Vinson, he asks "that the constitutional and judicial matters be trial de novo with respect to the allegations of paragraph 17 hereof."

No intervening party plaintiff may assert an interest or raise an issue greater or beyond the scope of the interest and issues raised in the original suit. In the proceedings in this cause before this Court the original plaintiffs are not entitled to a trial de novo; said original parties plaintiff are limited to the evidence and record which was before [fol. 2372] the Interstate Commerce Commission in the proceeding before it giving rise to the order attacked in the original suit in this Court. Said complaint of Director Vinson undertakes to inject new and additional evidence to that which was before the Interstate Commerce Commission in Dockets 28963 (Alabama), 29000 (Kentucky) and 29037 (Tennessee); and seeks a trial de novo in this Court.

Wherefore, the railroads, who are intervening defendants in this cause, move the dismissal of said Director Vinson's complaint, or so much thereof as unduly broadens the interest and issues raised in the original complaint,—that is to say, specifically, strike paragraph numbered 17 and the affidavit of Doris S. Whitnack and its accompanying tables referred to in said paragraph 17, and strike the first paragraph from the prayer of said Director Vinson's complaint numbered "First."

E. A. Smith, I. C. RR. Co., Chicago, Ill. H. L. Walker, C. & O. Ry. Co., Richmond, Va. W. L. Grubbs, L. & N. RR. Co., Louisville, Ky. Y. D. Lott, Jr., G. M. & O. RR., Mobile, Ala. F. W Gwathmey, 1110 Shoreham Bldg., Wash., D. C., Charles Clark, Southern Ry. Office Bldg., 15th & K Sts., N. W., Wash. 13, D. C. Attorneys for the Railroad Intervening Defendants.

[fols. 2373-2462] [Endorsed:] Copy received. Further service waived. 7/17/44. J. E. Marks, Attorneys for State of Kentucky, Kentucky Railroad Commission. M. D. Muller. Vinson, Director.

[fol. 2463] Before the Interstate Commerce Commission

Docket 29000

Kentucky Intrastate Fares

Hearing Room, Kentucky Railroad Commission, Frankfort, Kentucky. Wednesday, September 8, 1943.

Met, pursuant to notice, at 9:30 a. m.

Before C. E. Stiles, Examiner

Appearances:

Edward D. Mohr, % L. & N. Railroad, Louisville, Kentucky; James B. Gray, 135 E. 11th Place, Chicago, Illinois; and L. L. Oliver, % Southern Ry., Washington, D. C., appearing for Respondents.

Frank L. McCarthy; Mrs. John W. Langley, and Jack E. Fisher, Frankfort, Kentucky, appearing for Kentucky Railroad Commission.

Mr. M. B. Holifield, % Attorney General's Office, appearing for Commonwealth of Kentucky and Railroad Commission of Kentucky.

J. E. Marks, 145 E. High Street, Lexington, Kentucky, appearing for Railroad Commission of Kentucky.

M. D. Miller, 4225 Federal Office Bldg. No. 1, Washington, D. C., appearing for Price Administrator and Director of Economic Stabilization.

[fols. 2464-2466] Henry M. Johnson, Louisville, Kentucky, Louisville Trust Building, appearing for himself, a rider, objecting to increase of fares.

[fol. 2467] Proceedings

Examiner Stiles: Let us come to order. The Interstate Commerce Commission has assigned for hearing at this time and place Docket No. 29000, Kentucky Intrastate fares.

Who desires to enter appearances in this proceeding?

Mr. Oliver: For the Respondents, Edward D. Mohr, % L. & N. Railroad, Louisville, Kentucky; James B. Gray, % Illinois Central Railroad, 135 East 11th Place, Chicago, Illinois, and L. L. Oliver, % Southern Railway Company, Washington, D. C.

Mr. McCarthy: Frank L. McCarthy, Jack E. Fisher, and Mrs. John W. Langley, for the Kentucky Railroad Commission; Honorable M. B. Holifield, Assistant Attorney General for the Commonwealth of Kentucky, and Mr. J. E. Marks, Lexington, Kentucky, for the Kentucky Railroad Commission.

Mr. Miller: M. D. Miller, appearing for the Price Administrator and for the Director of Economic Stabilization, in opposition to the proposals of the Respondents.

Examiner Stiles: This is an investigation by the Interstate Commerce Commission instituted upon a petition by the rail carriers operating in Kentucky to determine whether the refusal of the Railroad Commission of Kentucky to authorize or permit the application to the transportation of passengers travelling intrastate in Kentucky of coach fares and charges corresponding to those estab-
[fol. 2468] lished for interstate application on October 1, 1942, causes any undue or unreasonable advantage, preference or prejudice as between persons or localities in intrastate commerce on the one hand and interstate or foreign commerce on the other hand, or any undue, unreasonable or unjust discrimination against interstate or foreign com-

merce, and to determine what fares and charges, if any, or what maximum or minimum, or maximum and minimum fares and charges shall be prescribed to remove such advantage, preference, prejudice or discrimination, if any, as may be found to exist.

Respondents may proceed with their evidence.

Mr. Oliver: I will call Mr. Aiken.

E. N. Aiken was sworn and testified as follows:

Direct examination.

By Mr. Oliver:

Q. Please give your name and state your residence and official railroad connection.

A. E. N. Aiken, Atlanta, Georgia, Assistant Passenger Traffic Manager, Southern Railway System Lines.

Q. State how long you have held your present position and, very briefly, your previous experience in passenger traffic matters.

A. I have been Assistant Passenger Traffic Manager since April 15, 1931. My service with the Passenger Traffic Department, Southern Railway System Lines, dates from [fol. 2169] August 1, 1902; prior to that date I was in the service of the Passenger Traffic Department of New York Central Lines for several years with headquarters at New York. My entire railroad career has been spent in the Passenger Traffic Departments of the railroads named.

Q. On whose behalf are you testifying in this proceeding?

A. Southern Railway Company was designated to act as Chairman of the Railroad Committee in presenting this case and I am speaking for all of the railroads operating within the State of Kentucky to which the Railroad Commission of Kentucky has denied authority to put their intrastate oneway and roundtrip passenger fares, good for transportation in coaches only, on the interstate basis in accordance with passenger tariffs filed with it to become effective December 1, 1942.

Q. Before proceeding with your testimony I think it would be well to place before the Examiner a map showing the railroad lines in Kentucky. You have, I believe, such a map which you wish to offer as an exhibit.

A. Yes.

Examiner Stiles: Let the map be identified as Exhibit No. 1.

(Exhibit 1, Witness Aiken, marked for identification.)

By Mr. Oliver:

Q. Will you identify the map, please, and state in what year it was published?

A. I file as Exhibit No. 1, a map prepared in 1943 by [fol. 2470] Office of Chief Engineer, Southern Railway System Lines, showing this information.

Q. What Kentucky intrastate passenger fares are involved in this proceeding?

A. Only the basic one-way passenger fares and the round-trip fares good for transportation in coaches only.

Q. Please give in chronological order a brief statement of the one-way interstate and intrastate basic passenger fares, good for transportation in coaches only, applicable in Southern Passenger Association territory from June 15, 1914, to date.

A. Generally speaking, the authorized bases of one-way passenger fares, good for transportation in coaches only, in Southern Passenger Association territory, i. e., territory south of the Potomac and Ohio and east of the Mississippi Rivers, including the gateways, for this period were as follows:

From June 15, 1914 to June 9, 1918, inclusive, 2.5 cents per mile, in all classes of equipment.

From June 10, 1918, to August 25, 1920, inclusive under order of the Director General of Railroads, 3 cents per mile.

From August 26, 1920, to November 30, 1933, inclusive, 3.6 cents per mile.

I might divert here a little and point out parenthetically [fol. 2471] that during the years 1932 and 1933 certain of the southern carriers decided as an experimental proposition to establish lower fares in an attempt to attract additional travel to the railroads in competition with other forms of transportation, particularly with the private automobile and buses. For example, from April 1, 1933, to November 30, 1933, inclusive, the Mobile and Ohio Railroad (now Gulf, Mobile and Ohio Railroad), Louisville and Nashville Railroad and Nashville, Chattanooga and St. Louis Railway had in effect experimental one-way passenger fares, good for transportation in coaches only, on basis of

2 cents per mile. During this same period the Southern Railway System Lines were experimenting between various points on their lines with a passenger fare, good for transportation in coaches only, of 1.5 cents per mile.

Continuing now with the chronological history. The fares for the remainder of period you have asked about were as follows:

From December 1, 1933, to November 14, 1937, inclusive, 1.5 cents per mile, except that the coach fare on certain roads such as the Illinois Central System, Mobile and Ohio Railroad (now Gulf, Mobile and Ohio Railroad) and St. Louis-San Francisco Railway, was kept at 2 cents per mile, these latter roads meeting the 1.5 cents per mile competition between certain points. The 3.6 cents per mile was continued on the Chesapeake and Ohio Railway until May 31, [fol. 2472] 1936, and on June 1, 1936, the fare was changed to 2 cents per mile but the Chesapeake and Ohio Railway met the competitive fare of 1.5 cents per mile between Louisville-Winchester and intermediate stations.

From November 15, 1937, to January 14, 1939, inclusive, 2 cents per mile in coaches. I might mention here that effective August 25, 1938, the fare on the Chesapeake and Ohio Railway was changed to 2.5 cents per mile, but from that date up to and including January 14, 1939, the Chesapeake and Ohio Railway met the 2 cents per mile coach fare between Louisville-Winchester and intermediate stations.

From January 15, 1939, to February 9, 1942, inclusive, 1.5 cents per mile in coaches, except on certain lines such as the Gulf, Mobile and Ohio Railroad, Illinois Central System, and St. Louis-San Francisco Railway which maintained a coach fare of 2 cents per mile, meeting the competition of other lines between certain points. The fare on the Chesapeake and Ohio Railway remained at 2.5 cents per mile until January 25, 1940, when it was changed to 2 cents per mile. During the period from January 15, 1939, to February 9, 1942, the Chesapeake and Ohio Railway maintained a coach fare of 1.5 cents per mile between Louisville-Winchester and intermediate stations to meet competition.

From February 10, 1942, to September 30, 1942, inclusive, 1.65 cents per mile in coaches, except on lines such as the [fol. 2473] Chesapeake and Ohio Railway, Gulf, Mobile and Ohio Railroad, Illinois Central System, and St. Louis-San Francisco Railway, which had a basic coach fare of 2.2 cents per mile but met competition between certain points.

Comparing the authorized basic fares in effect, good for transportation in coaches only, for the several periods mentioned with the coach fare being sought in these proceedings, i. e., 2.2 cents per mile, which is the same coach fare currently in effect for interstate traffic, it will be seen that:

For the period June 15, 1914, to June 9, 1918, the fares were approximately 13½ per cent higher.

For the period June 10, 1918, to August 25, 1920, the fares were approximately 36 per cent higher.

For the period August 26, 1920, to November 30, 1933, the fares were approximately 63½ per cent higher.

Q. When and under what circumstances was the 2.2 cent coach fare made applicable for interstate transportation generally throughout the South?

A. On July 14, 1942, substantially all railroads operating in Southern Passenger Association territory (except those roads which were maintaining at the time a coach fare of 2.2 cents per mile) filed a petition with the Interstate Commerce Commission for the authority necessary to enable them to place their one-way coach fares on the basis as in [fol. 2474] effect generally throughout the United States. When this petition was filed the great majority of the southern roads had in effect a coach fare on the basis of 1.65 cents per mile. However, certain roads, for example, the Gulf, Mobile and Ohio Railroad, Illinois Central System and St. Louis-San Francisco Railway had in effect at that time coach fares on basis of 2.2 cents per mile, this being the same basis generally in effect throughout the rest of the United States.

The authority sought was granted by the Interstate Commerce Commission in its order dated August 1, 1942, modifying the original order in Ex Parte 148, Increased Railway Rates, Fares and Charges, 1942, 248 I. C. C. 545, and the basis of coach fares authorized thereunder, i. e., 2.2 cents per mile for interstate traffic, was made effective on October 1, 1942.

Q. When the petition to which you refer was filed with the Interstate Commerce Commission, was there any protest filed with the Commission in connection with the proposed increase?

A. No. However, after the Interstate Commerce Commission had entered its order of August 1, 1942, approving the increase and after tariffs had been filed as authorized

by the Interstate Commerce Commission, Mr. Leon Henderson, then Price Administrator, filed a written protest and request for suspension. This protest was answered by the carriers and the Interstate Commerce Commission refused to suspend the tariffs and they became effective interstate, [fol. 2475] as previously stated, on October 1, 1942.

Q. What one-way coach fare is now being charged by the Kentucky Railroads for intrastate transportation in Kentucky?

A. The basis of one-way intrastate passenger fares, good for transportation in coaches only, generally maintained by the Kentucky railroads is 1.65 cents per mile. However, the Gulf, Mobile and Ohio Railroad and Illinois Central System now have in effect a coach fare of 2.2 cents per mile except in instances where they meet the competition of the lines maintaining 1.65 cents per mile fare, and on the Chesapeake and Ohio Railway east of Winchester and Covington the coach fare is also 2.2 cents per mile.

Q. Subsequent to the establishment of the interstate coach fare of 2.2 cents per mile to and from points in Kentucky, did the Kentucky lines undertake to establish the same basis of fares intrastate in Kentucky?

A. Yes.

Q. Explain what steps were taken and the results of the efforts of the Kentucky lines in this direction.

A. As previously shown, tariffs and supplements reflecting the establishment of 2.2 cents per mile were filed with the Railroad Commission of Kentucky to become effective December 1, 1942. These tariffs were suspended until June 28, 1943, by order of the Railroad Commission of Kentucky dated November 23, 1942, in Suspension Docket No. 29, which [fol. 2476] order provided that the matter be assigned for hearing before that body at a time and place to be later determined. On April 15, 1942, the Railroad Commission of Kentucky advised the hearing would be held in Frankfort, Kentucky, on May 12, 1943. This was later changed to May 14, 1943. The hearing was duly held on May 14, 1943, and decision of the Commission was rendered May 31, 1943, which denied the proposal of the carriers to make the one-way and round-trip coach fares proposed effective intrastate in the State of Kentucky, but approved proposal as to the change in round-trip fares, good for transportation in parlor and sleeping cars.

Mr. Oliver: Mr. Examiner, I have an attested copy of the order of the Railroad Commission of Kentucky, which the witness has just referred to, which I would like to file as my Exhibit No. 2.

Examiner Stiles: Let it be so identified by the reporter.

(Exhibit 2, Witness Aiken, marked for identification.)

By Mr. Oliver:

Q. Have the railroads in the South, including the Kentucky lines, sought within recent months to put their intrastate passenger fares in other states on the interstate basis?

A. Yes.

Q. State what action has been taken by the various State Commissions in the proceedings involving the proposed increases in passenger fares.

[fol. 2477] A. Petitions were filed with the Commissions in those states, the laws of which require that the authority of the State Commission be first obtained. In other states, in which no such requirement exists, tariffs designed to make effective the coach fare of 2.2 cents per mile were duly filed with the State Commissions.

The State Commissions of Florida, Louisiana, Mississippi, South Carolina and Virginia have approved the proposed fares.

The Railroad Commission of Kentucky denied the increase in the basic one-way coach fares, but permitted the Kentucky lines to put into effect the round-trip fares good for transportation in sleeping or parlor cars. These latter fares became effective June 28, 1943.

The State Commission of Alabama denied the increases sought and a 13th Section proceeding was instituted, hearing on which was held in Montgomery, Alabama, June 28, 1943, and the matter is now before the Interstate Commerce Commission.

The State Commission of North Carolina made no definite decision as to proposal for change in the one-way passenger fares, good for transportation in coaches, but have addressed a petition to the Interstate Commerce Commission seeking an investigation by that body of the interstate coach fares to and from the State of North Carolina. Change in the proposed round-trip fares, good for transportation in parlor and sleeping cars, was approved by the Commission.

[fol. 2478] As the action of the North Carolina Commission

was equivalent to a denial of the carriers' proposal, a 13th Section petition was filed by the carriers with the Interstate Commerce Commission and this matter is now pending before that body.

The State Commission of Tennessee has denied the increases sought, and the 13th Section proceeding will be instituted in due course.

The decision of the regulatory body of the state of Georgia has not as yet been released.

Q. Do all of the Kentucky lines maintain a one-way coach fare of 2.2 cents per mile for interstate transportation to and from points in Kentucky?

A. Yes.

Q. Is this fare of 2.2 cents per mile now in effect for interstate transportation throughout the South and generally throughout the remainder of the United States?

A. Yes, with a possibility of a few exceptions on lines operating west of the Mississippi River.

Q. Please explain how it happened that prior to October 1, 1942, some, but not all, of the Southern railroads had in effect coach fare of only 1.65 cents per mile, whereas the fare generally applicable in other parts of the country was 2.2 cents per mile.

A. In Docket 26550, Passenger Fares and Surcharges, decided February 28, 1936, and reported in 214 ICC 174, [fol. 2479] the Interstate Commerce Commission, after conducting an extended investigation, found that passenger fares of 2 cents per mile for transportation in coaches throughout the United States would be reasonable. In the same case the Commission referred to what is described as the "experimental coach fare" of 1.5 cents then being maintained by certain railroads in the Southeast, and, although approving the reasonableness of a coach fare of 2 cents per mile, held that the reduced coach fare of 1.5 cents was not "unlawful".

As previously indicated, effective November 15, 1937, the Southeastern roads increased their basic one-way fare from 1.5 cents per mile to 2 cents per mile. Subsequently, certain of the Southeastern carriers, not including, however, the Illinois Central System, Gulf, Mobile and Ohio Railroad and the St. Louis-San Francisco Railway, and possibly some of the smaller roads, concluded it would be to their advantage to restore the former one-way coach fare of 1.5

cents per mile. This was done effective January 15, 1939.

By its order of January 21, 1942, in Ex Parte No. 148, the Interstate Commerce Commission, upon petition of the railroads operating throughout the United States, approved a uniform increase of ten per cent in all passenger fares with certain provisions as to the disposition of fractions. Accordingly, passenger fares throughout the United States were increased ten per cent effective February 10, 1942. [fol. 2480] The general basis of coach fares, i. e., 1.5 cents per mile, applicable in the Southeast, with the exceptions heretofore mentioned, automatically became 1.65 cents per mile. On the other hand, the former fare of 2 cents per mile which was being maintained by the railroads in all other parts of the country, including some of the railroads in the Southeast, became 2.2 cents per mile. This ten per cent increase was also approved by the Kentucky Commission for intrastate travel on lines then maintaining a 2 cent per mile basis as well as lines maintaining a basic fare of 1.5 cents per mile.

Q. Do the passenger trains operated in the state of Kentucky carry both interstate and intrastate passengers?

A. Yes.

Q. Do interstate and intrastate passengers frequently ride on the same trains and in the same coaches?

A. Yes.

Q. Do you, as an experienced railroad passenger traffic officer, know of any reason which would justify the maintenance of a fare of only 1.65 cents per mile for intrastate coach transportation within the State of Kentucky, when an interstate passenger traveling to or from points in the State is required to pay 2.2 cents per mile?

A. No.

Q. With the present differences between intrastate and interstate fares, is it possible for a passenger to defeat [fol. 2481] interstate fares to and from points in Kentucky by buying an intrastate ticket for a part of a trip?

A. Yes.

Q. Have you prepared an exhibit which illustrates this situation?

A. Yes. As one illustration, the published interstate one-way coach fare from Somerset, Kentucky, to St. Louis, Missouri (on basis of 2.2 cents per mile) is $9.28. It is possible to purchase a one-way coach ticket from Somerset,

Kentucky, to Louisville, Kentucky, at the intrastate rate of $2.35, constructed on basis of 1.65 cents per mile, and rebuy, or pay cash fare on the train, from Louisville, Kentucky, to St. Louis, Missouri, at interstate fare of $6.27 (2.2 cents per mile), or total expenditure of $8.62, thereby defeating the through published interstate rate by 66 cents.

By Examiner Stiles:

Q. Will you name the railroads involved in such a transaction?

A. The Southern Railway and the Louisville & Nashville Railroad.

Q. The junction being at Louisville?

A. Yes, sir, and the Southern Railway would be in the same depot at Louisville, and the L&N Railroad would be across town, transfer.

Q. And this difference you stated does not take into consideration the cost of that transfer?

[fol. 2482] A. Not as between our line and the L&N Railroad, but there is no transfer at the Southern Railway; it is in the same depot.

Q. Perhaps I didn't understand you. I thought you made this illustration where it was Southern to Louisville and L&N beyond.

A. It could be both. A man could walk across the street or he could use our own train from Louisville; the Southern Railway also runs from Louisville to St. Louis as does the L&N Railroad, but they operate from different depots at Louisville.

Q. Somerset, Kentucky, is on the Southern Railway?

A. Yes sir, it is on the CNO&TP, of the Southern Railway System.

Examiner Stiles: Proceed.

Mr. Oliver: I wish to call this as my Exhibit No. 3.

Examiner Stiles: It may be identified as Exhibit No. 3.

(Exhibit 3, Witness Aiken, marked for identification.)

By Mr. Oliver:

Q. Please proceed.

A. I file Exhibit No. 3 giving a number of illustrations or examples of possible reductions in charges for interstate trips on tickets good for transportation in coaches only by

purchasing to the point nearest the State line at which trains are regularly scheduled to stop and rebuying therefrom to interstate destinations. These examples, or illustrations, can be multiplied indefinitely.

[fol. 2483] Examiner Stiles: Are these all instances which occur on the Southern Railway lines? It is headed "Southern Railway System".

The Witness: That is right.

Examiner Stiles: You don't show the railroad, and I wondered if these were entirely all Southern Railway System hauls.

The Witness: Yes sir, that is correct.

By Mr. Oliver:

Q. Now, let's be certain of that, Mr. Aiken. Have you any other railroad lines involved in there,—the L&N or from L&N points?

A. No sir, these are all Southern Railway System line points in this case. I do have, however, a statement that the L&N Railroad has furnished me if you would like to put it in evidence.

Q. You might give one or two illustrations from points on the L&N Railroad if you have them before you.

A. As an illustration, from Lexington, Kentucky, to Memphis, Tennessee, the interstate coach fare is $10.27; from Lexington to Guthrie, Kentucky, intrastate, the fare is $4.25 and from Guthrie, Kentucky, to Memphis, Tennessee, the fare is $4.77, a total of $9.02, or a difference of $1.25.

Mr. McCarthy: From Lexington to what points?

The Witness: Memphis.

Mr. McCarthy. But to what intrastate point?

[fol. 2484] The Witness: To Guthrie, Kentucky.

By Mr. Oliver:

Q. Do passengers actually defeat the interstate fares in the manner you have indicated?

A. It is common knowledge that advantage has been taken of the disparity in fares by interstate passengers buying tickets at the lower intrastate fare to a given point and rebuying from such point, or paying cash fare on trains, to destinations. The condition which permits of this exists but it is difficult and almost impossible to prove or to police.

Mr. Miller: I object to that testimony as hearsay unless it is qualified.

Mr. Oliver: Mr. Aiken is Assistant Passenger Traffic Manager of the Southern Railway System Lines, and, in the course of his duties, he gets reports from his agents and probably from conductors; at any rate, he supervises the passenger traffic business.

Examiner Stiles: If those are facts, you might bring out those facts by the witness and thus verify his qualifications for that testimony.

By Mr. Oliver:

Q. To shorten it, I will ask you in what connection has the statement that it is common knowledge that advantages taken of the disparity in fares by interstate passengers buying tickets at the lower intrastate fare to a given point and rebuying from such point or paying cash fares on trains?

[fol. 2485] A. Our agents and some of our passenger representatives have, at times, called me on our local phones, or my office phones, and made inquiry if they could issue a ticket at a certain given fare to a given point where the fare was the interstate fare and sell another ticket at the intrastate fare from the given point to the destination, which would effect a saving in the through fare from point of origin to destination interstate, and in each and every instance, they have been informed they could not do that.

Examiner Stiles: That goes to show that inquiry has been made by passengers whether they could do this. Your testimony was it is being done, and the objection was made that that was hearsay, and you are given an opportunity to say on what your testimony is based.

The Witness: Unfortunately, the gentleman didn't permit me to proceed, or I would have told you the conditions that exist, but it is difficult to prove, almost impossible to prove or to police the situation, as the individual has the right to buy from Somerset to Louisville, getting off at Louisville and rebuying, and I don't know that there is anything that you can do about it. He is not going to tell the conductor that he is going to do it, but he may buy his ticket from Lexington to Ludlow, and ride on across the river into Cincinnati before the conductor can get to him.

[fol. 2486] Mr. Holifield: You don't know that to be a fact, do you?

The Witness: I have not encountered it individually, and I wouldn't want to say so for that reason, and that is the reason that I am making this statement here.

Examiner Stiles: Your belief that it is done is based upon the facts that you have already testified to?

The Witness: Yes sir.

Examiner Stiles: With that explanation, the objection is overruled.

Mr. Holifield: What is your ruling?

Examiner Stiles: The objection is overruled in view of the explanation given by the witness.

Mr. Holifield: Exception on behalf of the Commonwealth of Kentucky.

Mr. Miller: Note an exception, please.

Examiner Stiles: Proceed, Mr. Oliver.

By Mr. Oliver:

Q. Have you prepared an exhibit illustrating that the present lower intrastate coach fares in Kentucky result in undue and unreasonable advantage, preference and prejudice as between persons and localities in intrastate and interstate commerce? Please offer your exhibit and explain it.

A. I have prepared such an exhibit.

Mr. Marks: I object to that testimony on the ground that it is a question calling for a conclusion of law whether there [fol. 2487] is any undue prejudice or preference.

Mr. Miller: I will object to the exhibit mentioned and to the question for the reason that it is not qualified as showing that any such instances have actually occurred in which there has been any attempts to defeat the interstate fare.

Mr. Oliver: Now, Mr. Examiner, I think with all due respect to Mr. Miller, I don't think that he has examined the exhibit mentioned. The exhibit does not show on its face that it is designed to illustrate any defeat of interstate fares. It shows or purports to show the difference in favor of intrastate passengers traveling within the state of Kentucky as compared with interstate passengers travelling from the same points in Kentucky to some point outside of the state for substantially similar distances.

Mr. Miller: I will not object to it if you will strike from your question "undue" and "unreasonable."

Examiner Stiles: What it results in is something that the Commission will determine.

Mr. Oliver: I grant you that.

Examiner Stiles: And I understand that although you have framed your question in this manner, what you really intended was—this next exhibit is what you submit to support your contention of undue and unreasonable preference and advantage and so forth.

Mr. Oliver: I will grant you that the question may be [fol. 2488] awkwardly phrased and that it might possibly call for a conclusion of law, and suppose that I reframe the question then?

Examiner Stiles: Yes.

Mr. Oliver: I will reframe the question.

By Mr. Oliver:

Q. You have prepared an exhibit, I believe, showing the difference in fare paid by passengers travelling within the State of Kentucky in comparison with the fares paid by interstate passengers travelling from a point within Kentucky to a point outside of the State for substantially similar distances, have you not?

A. Yes. And I filed as my Exhibit No. 4, I take it that it will be numbered 4, showing this information.

Examiner Stiles: Let it be identified as Exhibit No. 4.

(Exhibit 4, Witness Aiken, marked for identification.)

By Mr. Oliver:

Q. Will you please proceed with your explanation of that exhibit?

A. As an example of this, the interstate fare on basis of 2.2 cents per mile from Lexington, Kentucky, to Columbus, Ohio, a distance of 197 miles, is $4.44; whereas, the intrastate fare on basis of 1.65 cents per mile from Lexington, Kentucky, to Owensboro, Kentucky, a distance of 199 miles, or two miles greater, is but $3.35, a difference of $1.09. The examples shown in the exhibit are only illustrative and could be multiplied indefinitely.

[fol. 2489] Q. Did the Interstate Commerce Commission have before it in the original and reopened proceeding in

Ex Parte 148 a full and complete record of the facts concerning revenues, expenses, operating conditions, financial conditions, etc., of the Southern railroads, including the Kentucky lines, as well as of railroads operating in other parts of the country?

A. Yes. It is my understanding copy of the record is on file with this commission.

Q. In the report and order of the Interstate Commerce Commission on the further hearing in Ex Parte 148, dated April 6, 1943, did the Commission modify in any way its previous findings in connection with interstate standard passenger fares?

A. No.

Q. Are the railroads, including the Kentucky lines, now encountering any particular difficulties or incurring any unusual expenses in connection with the handling of passenger traffic?

A. Yes, they are. The handling of military movements necessarily entails substantial added costs. Equipment must be assembled at point of origin and this, in many instances, necessitates dead-heading equipment long distances. In addition, after the movement has been completed the equipment must in many cases be returned from destination point.

To comply with the Government requirements, a "train escort" is assigned to ride troop trains. This is an added [fol. 2490] item of expense.

That proper protection may be accorded, in accordance with the requirements of the Government for military movements, it has been necessary to increase the personnel in general offices in order that such offices may be on duty, in some instances, for 24 hours each day and others from 12 to 16 hours per day, which is another item of expense.

Examiner Stiles: The train escorts that you refer to is not entirely clear to me. Do you mean that the railroad sends an employee of its own as an escort?

The Witness: Yes sir, at the request of the Government.

Examiner Stiles: Proceed.

The Witness: Because of the volume of military, as well as civilian travel, the railroads have been compelled not only to increase their general office forces but also to increase the forces in ticket agencies and elsewhere, all items of added expense.

Large sums of money have been spent in the last decade in remodeling and air-conditioning passenger equipment in an effort to recapture a portion of the traffic using other modes of transportation, particularly from the highways. While the monies expended from these improvements have provided additional comforts and conveniences to the traveling public at, so far as coach travel is concerned, the lowest charges ever made by the railroads, it has materially [fol. 2491] increased the cost of service.

The Southern Railway System Lines, alone, have air-conditioned, or purchased new with air-conditioning facilities, 189 coaches. Many coaches have been remodeled to provide additional space for retiring and smoking rooms for both ladies and men, with soap, towels and drinking cups furnished without charge. In making these improvements, the seating capacity of the coaches was reduced roughly from 15 to 20 per cent, or from 80 and 88 persons to 70 persons; 14 Southern Railway System coaches have been equipped with reclining chairs and in these coaches the seating capacity was reduced almost 50 per cent or from 80 persons to 46 persons. This greatly decreased carrying capacity, correspondingly, lowering the revenue per coach.

By Mr. Oliver:

Q. Please state for the record the number of troop trains operated on Southern Railway System lines during the months of June and July, 1943, and the number of cars handling troops operated in your regular trains during these months.

A. On Southern Railway System Lines, during the month of June, 1943, there were operated three hundred and forty-five (345) troop trains. Three hundred and seventeen (317) regular trains were operated in two sections and 1458 extra cars handling troops were operated in regular trains. During July there were operated on Southern Railway Sys- [fol. 2492] tem Lines three hundred and thirty-seven (337) troop trains. Three hundred and fourteen (314) regular trains were operated in two sections and 1438 extra cars handling troops were operated in regular trains.

Q. Does the Government pay full tariff fares for troop movements?

A. No. Between points between which no land grant is involved, an allowance of 5 per cent is made the Government from commercial fares of all classes.

Between points between which the fares apply via route where land grant deduction is applicable, either in whole or in part, land grant deduction of 50 per cent is made from the commercial fare for that part of the route which is land grant and from the amount thus obtained an additional allowance of 3 per cent is made.

Q. At the time the one-way coach fare for interstate transportation was increased to 2.2 cents per mile, was any exception made as to members of the armed forces in uniform or furlough?

A. Yes. Upon request of the United States Government, reduced round-trip coach fares on the basis of 1¼ cents per mile were authorized for the personnel of the United States Army, Navy, Marine Corps, Coast Guard, Women's Naval Reserves, Women's Army Auxiliary Corps, Women's Coast Guard Reserves and Women's Marine Corps, travel-[fol. 2493] ling in uniform and at their own expense when on official leave, furlough or pass. This same fare is also accorded nurses, when not travelling in uniform, upon presentation of proper identification and, likewise, is accorded under similar conditions to the personnel of military forces of the several allied nations.

Q. There has been no proposal to increase this furlough fare for intrastate traffic travel in Kentucky, has there?

A. No proposal has been made to increase the round-trip coach fares for this character of traffic either interstate or intrastate.

Q. So far you have dealt priinarily with the matter of one-way coach fares. The railroads are here seeking not only to put their intrastate one-way coach fares on the interstate basis but are also seeking to make certain changes in round-trip fares in coaches. Please explain the present set-up of round-trip coach fares for interstate travel and state what relief the railroads are here seeking with respect to their intrastate round-trip fares in coaches.

A. Prior to October 1, 1942, in the Southeastern and other territories, there was in effect round-trip coach fares constructed on various basic fares per mile and with varied return limits.

With the approval of the Interstate Commerce Commission, effective October 1, 1942, the lines generally in all [fol. 2494] territories in the United States adopted one character of round-trip coach fare to bear a uniform return limit of three months from date of sale and this character

of round-trip coach fare is now in effect for interstate travel and likewise for intrastate travel in the southern states of Florida, Louisiana, Mississippi, South Carolina and Virginia as well as in other sections of the country.

The round-trip coach fares good for interstate transportation and also for intrastate transportation in the states named are constructed on the basis of 180 per cent of the one-way coach fare of 2.2 cents per mile, or 1.98 cents per mile for the distance travelled. The Kentucky carriers are seeking to establish exactly the same basis of round-trip fares for intrastate transportation in Kentucky as is now in effect for interstate traffic to and from points in Kentucky as well as in several states and other sections of the country heretofore mentioned. To accomplish this it is proposed that the current fifteen day limit round-trip coach fare on basis of 1.485 cents per mile and the sixty day round-trip coach fare on basis of 1.65 cents per mile be cancelled and that there be substituted in lieu thereof round-trip three months limit fare on the basis of 1.98 cents per mile.

Q. Have you anything further to add to your testimony, Mr. Aiken?

[fol. 2495] A. No, I think not.

By Examiner Stiles:

Q. Mr. Aiken, on page 12 of your statement, you refer to the remodeling of many coaches to provide additional space for retiring and smoking rooms for both ladies and men. I was under the impression since the women have taken to smoking so extensively that you allowed smoking in all the coaches, isn't that the rule?

A. No, that is not the rule, Mr. Examiner, but that rule is not generally observed; the ladies do smoke when and where they see fit. They even smoke in the Pullman cars now.

Q. It is not the rule, but the practice.

A. It was designed to be a place for them to smoke.

Q. I wonder how extensive this remodeling is in order to have these extensive smoking rooms. Has that been done to quite an extent? Isn't it very minor?

A. It is on the fourteen cars that I mentioned to you. Those are the ones. I don't know the exact number of cars that it was done on, but it was quite a number of them and they were thrown into our through trains for that pur-

pose. It might have been a good thing if we had not done it now as we would have had more seating space now.

Q. Do you have any idea as to the actual number?

A. No, sir.

Q. On page 13 of your written statement, you spoke about land grant deductions. Are there any land grant lines in [fol. 2496] the state of Kentucky?

A. Not a mile, not a single mile in the state of Kentucky.

Q. Then, that doesn't affect the fares in Kentucky?

A. Not in intrastate. I simply put it in here to show the general situation as to the fares to be paid by the Government.

Examiner Stiles: Do you tender your exhibits now?

Mr. Oliver: Yes, sir, Mr. Examiner, I would like to offer Exhibits 1 to 4, which have been identified by this witness.

Examiner Stiles: Exhibits 1 to 4, inclusive, are received in evidence.

(Exhibits 1 to 4, inc., Witness Aiken, received in evidence.)

Examiner Stiles: You may cross examine the witness.

Cross-examination.

By Mr. Marks:

Q. With respect to the question of smoking, is any effort made to prevent people from smoking in any part of your trains as a practical matter?

A. Yes, there are at times; certain conductors do; certain ladies object to it. The rules is that they are not supposed to smoke in the body of the car, but, as a matter of fact, as I say, it is possibly done almost as a current practice.

Q. Have you ever given any consideration to establishing a small part of your car where smoking would not be permitted?

A. Well, it always has been the rule that it would not be permitted except in the smoking compartments, so the largest part of the car was supposed not to be a smoking com- [fol. 2497] partment.

Q. I merely mention that because it is a personal matter with me,—my mother has had to quit riding on trains because she can't find a place where smoking is not permitted.

A. If you were to approach a conductor and tell him that, he would stop it, or attempt it.

Q. Well, she has never been able to do it anywhere in the train.

A. He is supposed to try to stop it.

Q. Briefly, why are you asking these increases in Kentucky?

A. To put our fares on an equality with the interstate fares such as we have in other states that we have asked.

Q. Would you say that uniformity is your chief reason?

A. It would not be the chief reason, no; it would be a very fine reason if we could get it done.

Q. What is the chief reason?

A. There is revenue involved and it should be on the same basis as the interstate, because this fare is a subnormal fare; it is not a normal fare under any circumstances.

Q. Would you go so far as to say that your chief reason for it is the need of additional revenue at the present time?

A. No, I don't think I would say that we are in need of additional revenue at this time.

Q. Now, on page 9 of your written testimony, in the next to the last question, you speak of the necessity of raising the [fol. 2498] Kentucky fares in order to bring about uniformity with the interstate fares. Couldn't the same result be reached by reducing your interstate fares to the level of the Kentucky intrastate fares?

A. Yes, sir, of course, but at a terrible sacrifice of revenue.

Q. Would it be any more sacrifice than you were making when you were operating on the lower fares in interstate?

A. Yes, sir, materially so.

Q. Why?

A. Because of the present-day conditions. When we made the reduced subnormal fare of 1.5, we were endeavoring to attract traffic from other modes of transportation, such as the highways and busses—the privately owned car was the largest factor, by the way, but that does not exist today.

Q. Are you in favor of the principle that the more traffic you get, the higher your fares should be?

A. No. I don't think it could be considered in the light of the subnormal fare we are discussing here. Our fare is nothing but a very unusual low fare; it is the lowest in the United States.

Q. Wasn't that the same situation existing in the South at the time that you had your hearing in 1936?

A. Yes, sir, that is correct.

Q. Now, referring to your testimony in regard to defeat- [fol. 2499] ing interstate fares by purchasing an intrastate ticket—taking up first the illustration from Somerset, Kentucky, to St. Louis, Missouri,—what would actually occur when the passenger from Somerset to St. Louis arrives at Louisville in order to get this alleged reduction?

A. All he would have to do would be to get off the train or walk into the station and buy a new ticket from Louisville to St. Louis, or he could remain on the train and buy a cash fare ticket because on the Southern Railway we have no penalty for any of our cash fares.

Examiner Stiles: That is for cash fares you have no penalty?

The Witness: Yes, sir, that is correct.

By Mr. Marks:

Q. If he stayed on the train, wouldn't the conductor know that he started from Somerset?

A. No, sir, because it is a new conductor at Louisville, and I wouldn't know how he would know it.

Q. Wouldn't he know that that passenger had already been riding on the train before he got to Louisville?

A. I don't know how he would know it, particularly in this day and time when the cars are pretty well filled as you know from observation.

Q. How would you know then that this is being done?

A. I have tried to explain that inquiries have been made to me whether it could be done—if it would be perfectly all [fol. 2500] right for them to do it, and in every case we have told them "no", and there is no way as I have said to actually prove it or police the situation unless we were to perhaps put a set of operatives on it which would hardly be the right thing to do.

Q. Do you mean to say that your conductors and agents are reporting that it is being done, and that they have reported that to you?

A. No, our passenger and ticket agents have asked us if that could be done, and I refer more particularly to the time when the Florida intrastate rates were on a lower basis, and inquiries came to us about selling a ticket to Jack-

sonville and then another ticket a different rate to their destination, so that the man could have his baggage checked through; but I said that nothing can be done even if the man does that, if he buys his ticket to Jacksonville and gets off and buys another and checks his baggage on from there; if he gets off and purchases a ticket there and presents it to us, we will have to check his baggage on for him.

Q. Let's not get down into Florida, but let's get back closer to home, because we know Louisville a good deal better than we do Jacksonville around here. Do you know of a single incident where it has been done?

A. Of my own knowledge, no, sir, I do not; although this is in the nature of hearsay evidence, I can cite you these [fol. 2501] matters—one of our men coming from Winchester to Louisville yesterday, the conductor told him that it was being done,—that it was done almost every day——

Mr. Miller: I object to that as hearsay.

By Mr. Marks:

Q. To where?

A. From points in Kentucky and that it was being done into Cincinnati, at Covington, we will say.

Q. All right, what did that man say had happened at Covington, since you have mentioned Covington?

A. I don't know anything about it definitely, and it is only hearsay so far as I am concerned, and I only mentioned it because it shows the possibility—it is there and it can be done, and whenever there is a big distributing center, such as Louisville in the State, it is very simple for a man to buy a ticket from a point out of Louisville and come to Louisville, and then buy another ticket from Louisville to Cincinnati and save money in that way.

Q. Might he travel in the same car or on the same train?

A. No, sir, he might not travel in the same car, and then again he may, or the same train.

Q. If he does travel on the same train, do you mean to say that he can just stay there in the car on that train with his baggage and then pay a cash fare from Louisville to Cincinnati?

A. The chances are that he does not have any checkable [fol. 2502] baggage when he pays a cash fare.

Q. Even though the conductor would know that he was on the train before he got to Louisville?

A. I doubt that he would know it, he being a new conductor out of Louisville, I hardly see how he could know that he came into Louisville on that train.

Q. How about the porter?

A. We are talking about the coaches and not the sleeping cars.

Q. You have no porters there?

A. No, sir, they only go through with the train crews to where their runs may end.

Q. Do you change your train crew altogether at Louisville?

A. Yes, sir.

Q. Going to where?

A. Going to St. Louis, the Louisville and Danville crew, and then the Princeton crew, there would be no difficulty in anybody getting off the train and buying a ticket; when he buys a ticket and presents it, the conductor must accept it.

Q. Does the conductor make any effort to see that his passengers who are scheduled to go to Louisville get off at Louisville?

A. No instructions have ever been issued by us to conductors to check on it.

Q. If the conductor does not keep up with his passengers, what is to keep a passenger from Somerset buying a ticket [fol. 2503] to Danville and riding on to Louisville free?

A. He knows that he is going to Louisville, and the connecting or the new conductor gets on at Louisville.

Q. Is it a fact that this practice is illegal if it is being indulged in?

A. I don't believe I could answer that question for you—

Examiner Stiles: That is a question that should not be directed to this witness.

By Mr. Marks:

Q. Have you issued any instructions to your men to try to stop this practice if it is being indulged in?

A. No, sir, not a line. We have issued nothing in writing.

Q. Is it a part of their duties, is it a part of the duty of the conductors to collect legal fares?

A. They do, they do collect them.

Q. Would it be legal, or do you know whether it would be legal or not?

A. I wouldn't like to attempt to answer that question for you.

Examiner Stiles: That is a legal question that should not be put to this witness. Off the record.

(Discussion outside the record.)

Examiner Stiles: On the record.

By Mr. Marks:

Q. On page 11, you spoke of certain added costs that are being incurred by your railroad in the passenger business today. Wouldn't those added costs, if any, be reflected in your operating expenses?

[fol. 2504] A. We are going to have another witness who can give you the statistical data that I am not in possession of that might be able to answer that question better than I could for you.

Mr. Marks: If he doesn't know anything about these costs on cross-examination, then I think that his testimony on direct examination should be stricken, and I so move.

Examiner Stiles: If the Respondents do not submit evidence before they are through to sustain these statements, then I will entertain your motion at that time.

By Mr. Marks:

Q. Is it your contention that you are making less money on your troop train movement than on your regular train movements?

A. No, sir.

Q. Were these voluntary improvements that you have made that you speak of, or were they required by some Federal authority?

A. These were voluntary originally, sir.

Q. Now, with respect to such things as observation cars, ordinarily; aren't these available to your passengers on your Pullman cars rather than your coach passengers?

A. They are not available to coach passengers; they are only available to Pullman passengers.

Q. May I ask you why you make that allowance of 5 per cent on troop movements?

A. Yes, sir, the carriers in all the United States, all of the carriers in the United States have an understanding [fol. 2505] with the United States Government, and this arrangement has been built up over many, many years, and the carriers do the routing of the traffic so as not to

congest any one line or anything like that. It keeps away from the bidding and that sort of thing.

Mr. Marks: That is all.

By Mr. McCarthy:

Q. Mr. Aiken, these trains that have been air conditioned, these coaches that have been better equipped, are all interstate trains, are they not?

A. Well, they run intrastate, too, as well as interstate; our big trains all handle some intrastate traffic in them.

Q. Do you have any trains on the Southern that are intrastate alone?

A. In Kentucky?

Q. Yes.

A. Yes, we do, and I think they are NCA cars.

Q. What do you mean by that, by NCA?

A. Not air conditioned.

Mr. Miller: When you speak of intrastate trains, do you mean a train that starts and stops within the state of Kentucky?

Mr. McCarthy: Yes, sir.

The Witness: That is what I understood his question to be.

By Mr. McCarthy:

Q. And all of these improvements are not on the wholly [fol. 2506] intrastate trains?

A. Not wholly on the intrastate?

Q. Yes.

A. No, sir.

Q. Any intrastate trains does not have these extra improvements?

A. No, sir.

Q. Is that true on the other railroads in Kentucky, or do you know about them?

A. I wouldn't like to express an opinion on that because I don't know.

Q. And any improvements that you referred to on page 12 refer only to the Southern Railway?

A. Yes, sir, I mention our line particularly.

By Mr. Miller:

Q. On page 13 of your prepared testimony, you mentioned this furlough fare of 1¼ cents; do you know whether or not that fare is compensatory?

A. I would say it was not, but I can't tell you definitely.

Q. You don't know?

A. No; it is too low; it is a very subnormal fare.

Mr. Oliver: You might have to define the term "compensatory".

The Witness: Yes, sir, very much.

Mr. Miller: If he doesn't know, that is all I want to know.

By Mr. Miller:

Q. Now, on page 12 of your prepared testimony, you [fol. 2507] mention the fact that the seating capacity of your coaches has been reduced roughly to about 70 persons. Does that apply to all coaches that you operate in Kentucky?

A. I don't understand your question.

Q. On page 12 of your prepared testimony, does the testimony regarding the reduction of your coach capacity to 70 persons apply to all persons operated in Kentucky?

A. I don't know that, sir, definitely. I imagine, however, that a witness we will have following can give you that information definitely.

Q. Now, in troop trains, are all seats in a coach generally occupied?

A. In troop trains?

Q. Yes.

A. They are loaded, generally speaking, on about 50 to a coach, but we are allowed to load them on a basis of 75 per cent capacity of the car—that is to take care of the equipment and certain other things that the men carry with them, if they are moving in coaches exclusively. If they are moving in sleeping cars, that is a different story.

Q. Now, referring to page 11 of your prepared testimony, you mentioned the proceeding in Ex Parte 148. Is it not true that the original proceeding had before it only the issue of the 10 percent increase, and that the proceeding on further hearing had only the issue of the suspension [fol. 2508] of that 10 per cent increase?

A. Do you mean in Ex Parte 148?

Q. Right.

A. I don't know how the Commission separated it. We asked for an increase under the 26550 and they denied it and put it back under the Ex Parte 148, so I just don't know how they did separate it, to tell you the truth. Maybe Mr. Oliver can tell you.

Mr. Oliver: I think he refers to the original proceeding in Ex Parte 148 where the carriers asked for 10 per cent increase. Then, in the reopened proceeding, as I recall it, the request of the OPA was for cancellation of the increase that had been granted previously. That was the question, as I understand it.

Mr. Miller: Yes.

Mr. Oliver: And I would say that that is correct. You are referring to the fact now where the carriers in the South asked to increase our fares interstate from 1.65 to 2.20?

The Witness: That is what I thought he referred to.

Mr. Oliver: The Commission entered an order in Ex Parte 148 to modify the original order to the extent necessary for us to do that.

The Witness: That is what I thought he was referring to.

Mr. Miller: That is satisfactory to me.

By Mr. Miller:

Q. On page 11 of your prepared testimony, you also [fol. 2509] described increased costs. Is it not true that revenues have increased by even greater percentages, than your increased costs?

A. Our revenues have increased and costs have increased, but their relative percentages, I would not have—I would like for our statistical witness to answer you on that, because I don't know it; it is not my business to work up the statistics.

Mr. Oliver: We will have full and complete information on that score.

By Mr. Miller:

Q. Now, I refer to pages 9 and 3 of your prepared testimony. On page 3, you describe the rate of 1.5 cents per

mile generally maintained by Southern carriers from 1933 to the latter part of 1937, and increased to 2 cents per mile from November, '37 to January 14, '39, and then the reduction to the rate of 1.5 effective January 15, 1939. On page 9, you say that these lines made this deduction on January 15, 1939, because it would be to their advantage to restore the former one-way coach fare of 1.5 cents per mile. Why did they reach that conclusion?

A. They reached the conclusion because the 2 cents increase did not produce the results they anticipated that it would produce.

Q. You mean by that that the total revenue produced by the 1½ cent fare was more than the total revenue being produced by the 2 cent fare?

[fol. 2510] A. Generally speaking, I would say that that is correct.

Q. Now, referring to page 7 of your prepared testimony, is it not true that in support of that petition addressed to the Interstate Commerce Commission by the Public Utility Commission of North Carolina, the Alabama Public Service Commission, and the Office of Price Administration have also petitioned for an investigation?

A. I haven't seen a copy of the Office of Price Administration petition, but I have a copy of the Alabama petition.

Q. It is a petition to seek a hearing as to the reasonableness of intrastate fares?

A. But I understand the OPA also did the same thing.

Q. Now referring to page 5 of your prepared testimony, do you know whether the Southern railroads notified the Price Administrator, and consented to the timely intervention by the Price Administrator prior to 30 days before that increase in interstate rates which occurred on October 1, 1942?

Mr. Oliver: I would like to answer that question.

Mr. Miller: That is all right, if you wish to.

Mr. Oliver: At the time that the increase was made, the amendment to the Emergency Price Control Act had not gone into effect. The increase in fares became effective October 1, 1942, and the amendment to the Price Control Act which required consent to timely intervention became effective on October 2, 1942, so, of course, there was no [fol. 2511] notice given to the Office of Price Administration.

Mr. Miller: With that explanation, Mr. Examiner, I move this proceeding be discontinued on the theory that the present interstate rates are not effective because there has been no compliance with Section 1 of the Stabilization Act just mentioned by Mr. Oliver, which is retroactive to September 15, 1942, and for authority of that conclusion, that it is retroactive, I offer the case Henderson vs. Washington, Marlborough & Annapolis Motor Lines, 132 Fed. 2nd. 729. Incidentally, I have a mimeographed copy of that decision with me if any person cares to look at it.

Mr. Oliver: I have read it and expect that the Examiner has also.

Examiner Stiles: The Examiner, of course, will not grant that motion at the hearing. If you want to press that motion, Mr. Miller, you must do so in your brief.

Mr. Miller: All right, sir.

Examiner Stiles: Any further cross-examination?

Mr. Miller: No, sir, I have none.

Mr. Marks: Just one further question.

By Mr. Marks:

Q. Mr. Aiken, to what extent are the fares of the Chesapeake & Ohio Railway involved in this proceeding?

A. My understanding is their fares are from Winchester over to Louisville and the intermediates. They have a subnormal fare in effect with an expiration date in their [fol. 2512] tariff for their Big Sandy Division, and I take it that that fare, if and when cancelled, would automatically put into effect the same fare that they have on their other lines, the line between Ashland, Catlettsburg and Covington or Ashland, Catlettsburg and Winchester, 2.2 cents per mile.

Q. Before they could increase that fare, wouldn't they have to make application to the OPA before they could increase it?

A. They probably would have to——

Mr. Oliver: I think we are getting into a legal question again.

The Witness: I think they would have to tell them something about it, I don't know how they would do it.

Mr. Marks: I will withdraw that.

By Mr. Marks:

Q. Do you know how long that fare has been in effect?

A. No, sir, but it has been for sometime; they have carried it on from time to time by reissuing that tariff and putting a new expiration date on it,

Q. Do you know what that expiration date is?

A. No, sir, it is purely a local situation on the Chesapeake & Ohio Railroad that I would not come in contact with in my business dealings, but I do know that because it was given to me by the C&O man.

Q. There is no question before this Commission today about raising those particular fares?

[fol. 2513] A. I don't so understand, on the Big Sandy Division.

Mr. Marks: That is all.

Examiner Stiles: Any redirect?

Mr. Oliver: I have no questions.

Examiner Stiles: You are excused.

(Witness excused.)

Examiner Stiles: We will take a short recess.

(Whereupon, a short recess was taken.)

Examiner Stiles: Call your next witness.

Mr. Gray: I will call Mr. Tucker.

F. H. Tucker, Jr. was sworn and testified as follows:

Direct examination.

By Mr. Gray:

Q. Please state your name, address and occupation for the record, please, sir?

A. My name is F. H. Tucker, Jr.; my address is Louisville, Kentucky.

Q. And what is your present position, Mr. Tucker?

A. I am District Passenger Agent for the Illinois Central Railroad in Kentucky.

Q. What has been your experience in passenegr traffic work?

A. I have been handling passenger traffic work since 1922, approximately 21 years.

Q. How long have you held your present position?

A. In the present position in Louisville since September [fol. 2514] 1, 1937.

Q. Will you locate generally the passenger lines of the Illinois Central Railroad within the State of Kentucky?

A. The passenger lines of the Illinois Central Railroad in Kentucky may be roughly described as four divisions or services of the railroad,—from Louisville to Fulton, Kentucky; from Princeton, Kentucky, to Henderson, Kentucky; from Princeton, Kentucky, to Hopkinsville, Kentucky, and from Fulton to Wickliffe, Kentucky.

Q. What is the train service of the Illinois Central Railroad on those lines?

A. On the first mentioned, which is from Louisville to Fulton, we have what is described as double daily train service, which means two trains each way a day.

On the line from Princeton to Henderson, we have mixed train service; similar service on the line from Princeton to Hopkinsville; and on the line from Fulton to Wickliffe, which is our main line, there are five trains each day, but insofar as service to the state of Kentucky is concerned, there is one northbound train and two southbound trains, because the other trains do not stop at Wickliffe.

Q. Do those trains that operate to and from Fulton, both on the main line and on the east-west line, make connection with the main lines south and north?

A. At Fulton.

[fol. 2515] Q. Have you prepared an exhibit showing possible discriminations to interstate traffic?

A. Yes, I have.

Mr. Miller: I understand this exhibit is to show only possible rather than actual discriminations, is that correct?

Mr. Gray: The question as stated was whether he had prepared one to show possible discrimination. Whether that has happened has not been answered yet.

Could I have that exhibit marked, Mr. Examiner?

Examiner Stiles: The exhibit just distributed will be identified as Exhibit No. 5:

(Exhibit 5, Witness Tucker, marked for identification.)

By Mr. Gray:

Q. Briefly explain just what this exhibit shows.

A. The exhibit marked 5 for identification is to show the possibility of a passenger who is, in fact, an interstate passenger, taking advantage of the intrastate rates.

Example No. 1 shows the rate from Paducah, Kentucky, to Cincinnati, Ohio, for a round-trip coach, $13.80. That passenger could purchase at Paducah a round-trip coach ticket to Louisville, Kentucky, for $7.48, and at Louisville, as he is leaving the train anyway, all coach passengers changing trains at Louisville, he could purchase at Louisville a round-trip ticket from Louisville to Cincinnati for [fol. 2516] $4.80, making his total outlay $12.28. Whereas, had he purchased at Paducah a round-trip coach ticket to Cincinnati, he would have paid $13.80, making possible a saving of $1.52.

Q. How long a wait is there between the arrival at Louisville and the departure from Louisvilel to Cincinnati?

A. Passenger trains arriving at Louisville in the evening at 5:50 have a connection out at 7:00 p. m., giving the passenger an hour and ten minutes at Louisville.

Passenger trains arriving at Louisville in the forenoon, at 8:05 give to the passenger 25 minutes, leaving at 8:30 for Cincinnati.

Q. What line makes the connection at Louisville?

A. The B. & O. for Cincinnati passengers.

Q. Does that train leave from the same train that the Illinois Central trains arrive at in Louisville?

A. The Illinois Central Railroad and the B. & O. Railroad have a joint station at Louisville, Kentucky, and it so happens that it leaves from an adjoining track in the same station.

Q. Where do these passengers go after arrival in Louisville prior to the departure on the B. & O.?

A. It is necessary in order to clear the station platform that all passengers arriving on either the morning or evening train be sent into the station; the station forces are instructed to put them in because the B. & O. train in neither case is ready to leave.

[fol. 2517] Examiner Stiles: Did you give this connection for the morning train also?

The Witness: Yes, sir; 8:05 and 8:30—25 minutes between them.

By Mr. Gray:

Q. On Exhibit 5, in your example No. 2 on your Exhibit No. 5, how long a wait is there between trains or how long does the train stop at Fulton, Kentucky?

A. In the case of the train arriving at Fulton, Kentucky, in the morning, there is 25 minutes between the time of the arrival of the passenger from Louisville until the train that would take him south leaves; in the case of the train arriving at Fulton, Kentucky, in the evening, there is 20 minutes between the time of arrival and departure for points south.

Examiner Stiles: Both hauls there are on the Illinois Central Railroad?

The Witness: That is right.

By Mr. Gray:

Q. What do examples A and B on your Exhibit No. 5 show, Mr. Tucker?

A. The purpose in presenting examples A and B was to give illustrations of the difference in per mile rate paid by passenegrs intrastate and interstate. For example, a passenger at Fulton, Kentucky, travelling 221.6 miles to Grenada, Mississippi, pays $8.95 for a round-trip coach fare. If the same or another passenger wished to travel to Cecilia, Kentucky, a distance of 223.4 miles, he would [fol. 2518] pay only $7.43, or have a difference of $1.52 in his favor, in favor of the intrastate passenger.

Q. Mr. Tucker, your exhibit here deals with round-trip coach fares. What is the present one-way fare on the Illinois Central Railroad in Kentucky?

A. 2.2; there is no application for reduction, of course, in that.

Q. You mean there is no application for an increase in the 2.2?

A. That is right, no application for increase in the 2.2.

Q. Is this exhibit prepared by you or under your direction?

A. Prepared by me, yes.

Q. Is it true and correct to the best of your knowledge and belief?

A. Yes, sir, it is.

Q. Could you have given numerous other examples of this same situation on the Illinois Central Railroad?

A. Yes, sir, this was prepared with only one example in each case for brevity only; the same comparison could exist between any two stations on the entire railroad.

Mr. Gray: I offer Exhibit No. 5 into evidence.

Examiner Stiles: Exhibit No: 5 is received in evidence.

(Exhibit 5, Witness Tucker, received in evidence.)

Mr. Gray: That is all on direct, Mr. Examiner.

Examiner Stiles: Is there any cross examination?

[fol. 2519] Mr. Holifield: Yes, sir.

Cross-examination.

By Mr. Holifield:

Q. Your exhibit simply illustrates the possibility that a passenegr might engage in the practice that you object to?

A. That is correct.

Q. You don't undertake to show any instance where that has been done?

A. We do not.

Q. Personally, you don't know whether it is being done or not, do you?

A. We do not, no.

Q. When a passenger arrives at Fulton, Kentucky, going south, in the morning he has 25 minutes there, and in the evening 20 minutes, I believe?

A. That is right.

Q. Now, the situation at Fulton, Kentucky, is that at the station where this train arrives, there are four or five tracks, isn't there?

A. That is right.

Q. In order to make this exchange, that passenger would have to get off of the train and go across those four or five tracks to the depot in order to get his ticket from Fulton, Kentucky, to the points south?

A. That is correct, except his going across the tracks: [fol. 2520] that is hardly a point of any interest, I suppose, but it so happens that the train from Louisville arrives at Fulton on the track nearest to the station. I doubt if that would have any bearing on whether he followed the practice or not.

Q. And if he had baggage with him, he would have to leave that baggage in the train or carry it with him, wouldn't he?

A. That is right.

Q. And then when he got to the station, he would find the agents busy and when he called for his ticket, he would have to wait until they had an opportunity to wait on him, isn't that correct?

A. At that time, I don't think that he would have any trouble whatsoever in purchasing a ticket. We haven't left any passengers there who wanted to buy tickets.

Q. Isn't it a fact at that point that you take off your dining car?

A. Yes, sir.

Q. And you put on a new dining car there?

A. No, not exactly that, but what happens is that from the Louisville train they take a Pullman car.

Q. And the coach, that occurs regularly, and sometimes extra coaches?

A. Yes.

Q. People have to move out of that coach?

[fol. 2521] A. No, they don't take those off. It is like this, they take them from this train from Louisville and put them on the train coming from Chicago, and insofar as the passenger is concerned going through, he has had a through car from Louisville to New Orleans. The passenger who is going through does not have to transfer unless he wants to.

Q. Has your railroad taken any precautions to prevent passengers engaging in the practice that this exhibit is made to illustrate?

A. Consideration was given to it, but because we could think of no value—nothing that we could do about it, it didn't seem to be worthwhile to establish it. There is no penalty we can place on it. If the passenger came into our office and said he was going to do it, we would still have nothing to do to prevent him from doing it.

Q. Yes, but the conductor would know that that passenger had made the trip from Louisville to Fulton, wouldn't he?

A. The conductor on the train?

Q. Yes.

A. But they change conductors there.

Q. At Fulton?

A. Yes, sir, at Fulton, we change the entire train crew.

Q. On changing conductors, your conductor from Louisville, Kentucky, could furnish information as to the number of passengers he had to the points south and to the points at [fol. 2522] Louisville, couldn't he?

A. Yes.

Q. And by his having that information, he could detect the old passengers getting tickets there, couldn't he?

A. No.

Q. You think not?

A. The conductor on entering Fulton—we will take that, for example—he would tell the conductor leaving Fulton that he had 30 passengers, we will say, from Memphis. He would count the tickets he held through to Memphis and not the passengers. But insofar as the conductor from Louisville was concerned, this passenger that bought a ticket to Fulton would be a Fulton passenger and not a through passenger. What it would amount to, he would originate at Fulton, so far as the new conductor is concerned and terminate at Fulton, so far as the old conductor was concerned.

Q. Do you want this 13th Section case sustained solely to protect the Illinois Central Railroad from this practice that you filed this exhibit to illustrate?

A. To protect them from?

Q. To protect them from the passengers engaging in this practice that this exhibit was filed to illustrate?

A. I would say that there was some monetary consideration there.

Q. Is the Illinois Central Railroad not making sufficient [fol. 2523] money on its passenger traffic at this time to pay operating expenses and a reasonable profit?

A. Well, those statistics are not available to me. I could say that the reports made to the Interstate Commerce Commission show these figures and that is not in my department to determine whether it is at a loss or making money.

Q. Isn't it a fact that while you have about 92 stations between Fulton and Louisville, that you only accommodate 14 stations between those points for passenger service?

A. Fourteen stations are being served.

Q. There are only 14?

A. I am not substantiating the figure of 92 stations.

Q. Well, in the neighborhood of that?

A. I think it runs 63 that could really be counted as stations, because to make up any figure higher than that, a

lot of the others would need to be abandoned for lack of traffic.

Q. The raise in the interstate passenger rate was granted to you in October, 1942?

A. That is right.

Q. And in September, you ceased to furnish local service to the portions of the Illinois Central Railroad from Fulton to Louisville on all stations except fourteen between those two points?

A. Yes, sir.

[fol. 2524] Q. And it is only those fourteen stations where a person could get on where he could possibly engage in this practice that you are complaining of?

A. Yes, sir.

Q. Might be—you don't know whether it is being done or not, do you?

A. Correct.

Q. Well, now, if the train should come into Fulton late, say it was 30 minutes late, it wouldn't remain over at that station a full 25 minutes or 20 minutes, would it?

A. It would make connection immediately if it were sufficiently late.

Q. Isn't it a fact and don't you know that practically every train that arrives in Fulton, Kentucky, and every train on the Illinois Central Railroad that arrives at Louisville, Kentucky, is late?

A. No.

Q. That is not a fact?

A. No, that is not a fact.

Q. Well, aren't a majority of them late?

A. Not a majority.

Q. Are some of them late?

A. I could get those statistics for you.

Q. I would thank you to put them in this record because I have heard universal complaint about that?

[fol. 2525] Mr. Gray: I object to that, to furnishing that additional information.

Examiner Stiles: Is there a gate man there?

The Witness: Where? At Fulton?

Examiner Stiles: Wasn't it at Fulton where he talked about the trains being late?

The Witness: He asked about both Fulton and Louisville.

Mr. Holifield: I am speaking of both places.

Examiner Stiles: Where are the passengers to make the change where there are 20 or 25 minutes between trains?

The Witness: That is at Fulton.

Examiner Stiles: Is there a gateman there?

The Witness: No, sir, and not even a gate.

By Mr. Holifield:

Q. The passengers actually get off out in the yard, isn't that a fact? There is no gate or gateman there, but there is a gateman at Louisville.

A. I wouldn't say that the passengers get off in the yard at Fulton. There is a gateman at Louisville.

Q. And the gateman would know about that, isn't that a fact?

A. He wouldn't know whether the practice was followed or not. A passenger coming up from any point on our line from Fulton to Louisville would get off with the other passengers and pass through the gate, whether he went uptown or whether he disappeared as a Louisville passenger, or whether he went into our ticket office and there purchased a [fol. 2526] ticket to Cincinnati couldn't be determined by the gateman.

Examiner Stiles: Where there is a gateman and a passenger walks up to him and says, "I want to take this train and I still have to get my ticket", will he hold the train for that man to buy his ticket?

The Witness: That would be true at Louisville, it would be done at Louisville.

Examiner Stiles: Wherever there is a gateman, that would be done?

The Witness: Yes, sir.

Examiner Stiles: But at Fulton, that couldn't occur, because you have no gateman there?

The Witness: That is right.

By Mr. Holifield:

Q. In that instance, you would have noticed that this passenger was fixing to practice what you are trying to illustrate by this exhibit?

A. In Louisville?

Q. Yes.

A. No, the fact that he said that—there have been many times before that there was chance to practice a defeat

of this rate. For instance, a passenger would come in at some station down the line where the ticket agent either because he was busy or didn't have his rate sheet, that he sold the man a ticket to Louisville only, and it has been a part of the work in our department to curb short sales, [fol. 2527] however, it exists all the time. For instance, the ticket man or the ticket agent will say to a prospective passenger, "I will sell you a ticket to Louisville and you can repurchase there", and that was done even before this thing ever came up.

Q. In other words, your officers are encouraging this thing?

A. I mention it to show that this thing has happened before and that it could happen now, but no officer is encouraging it.

Mr. Fisher: I would like to ask a question at this point. Have the employees, or does the company have any authority to prevent them from doing this practice?

The Witness: No, sir.

Mr. Fisher: And even if they did know it, there would be no way to prevent it?

The Witness: That is right.

By Mr. Holifield:

Q. In other words, you mean that your company, that the possibility is here, but the probability is so small that you have made no effort whatever to keep people from practicing this thing?

A. Our reason for making no effort is because we could do nothing about it. There is no need to load your gun when there is nothing to shoot.

Q. In other words, you have just hoped that the Commission will construe that there is game?

A. That is right.

[fol. 2528] Q. Now, formerly, before October 1, 1942, you gave the citizens of Kentucky at all stations between Louisville and Fulton an opportunity of transportation service.

A. We offered it to them, but they didn't accept it very well.

Q. Now, at the present time, speaking of expense, if a man at Pryorsburg, Kentucky, wanted to go to Louisville, Kentucky—Pryorsburg is six miles south of Mayfield—in order to go to Louisville, Kentucky, on your train, that man

would have to get some other mode of transportation for that six miles before he could get any service over your line, isn't that correct?

A. Yes, sir.

Q. You don't stop at Pryorsburg or at any of the other 70-odd stations?

A. We don't stop between Fulton and Mayfield.

Mr. Holifield: That is all.

By Mr. Marks:

Q. You spoke of offering service to those stations other than the 14th, and that it was not used to any great extent. Have you made any offer or effort recently to serve those points?

A. We are prevented from establishing any new service through the ODT order.

Q. Have you had any recent request to serve any of those stations recently?

A. There was a request from Vine Grove to add that as a [fol. 2529] stop of the regular train—not for the addition of any train service. I believe that hearing was brought up here. That is the only case that has come to my attention.

Q. Are you aware of any request having been made by the folks at Gilbertsville?

A. Not recently. There was a request made through a petition addressed to the railroad itself, I believe as long ago as October of last year, and by examination of the petition and a conference with the Kentucky dam authorities at Gilbertsville, and the conference held with the man who was appointed, the request was withdrawn.

Q. In view of the difficulties of travelling today, don't you believe that a lot of those points would like to have service today where they may not have used it to any great extent a few years ago?

A. It is quite possible.

Mr. Marks: That is all.

By Mr. Holifield:

Q. Will you put in evidence the facts as to whether or not you are late with your trains for a period of 90 days selected by you?

A. Let's make it for the 90 days immediately next prior to this, if you wish.

Q. That is satisfactory.

Mr. Gray: I don't think that is necessary, and I see no reason for putting that in the record and putting us to that [fol. 2530] trouble and expense of getting it up.

The Witness: I think personally since the question has been raised that I would like to present it for the record here.

Mr. Gray: All right.

The Witness: For the reason that it wouldn't show more than 25 per cent; it would show less than 25 per cent off time operations.

Mr. Holifield: If it is in your favor, I want you to get the beenfit of it, and if it is against you, then I think you should get the benefit of it that way too.

The Witness: Our record is the highest of any rail line in the city of Louisville for on time operations.

Mr. Holifield: You file that and send me a copy of it.

The Witness: All right.

Examiner Stiles: What does counsel say?

Mr. Gray: If he wants to file it, all right.

Examiner Stiles: Counsel is willing to submit it.

Mr. Gray: Yes, sir, if you will give us ten days, and we will submit copies of it to counsel of record.

Examiner Stiles: You can furnish that within ten days?

The Witness: Yes, sir.

Examiner Stiles: Permission is granted to furnish within ten days a statement showing the extent of lateness of arrival of this Respondent's trains at Louisville over a repre- [fol. 2531] sentative period.

Mr. Marks: And at Fulton too?

Examiner Stiles: And at Fulton too.

Mr. Gray: Plus the main line east and west—both main line and east-west operations.

The Witness: No, just east-west he is interested in.

Examiner Stiles: That should be furnished to the secretary of the Commission, sending two copies to the secretary and advising him in your letter that you have served copy on other counsel of record. Now, is it clear in the record as to which trains that is to cover?

Mr. Gray: I want to put in the main line trains at Fulton also; you might as well get the complete picture.

The Witness: They are not involved in the question raised.

Mr. Gray: If you will allow me to ask you a question—if the main line train going south was late coming into Fulton, would that give additional time for the passengers to make the change?

The Witness: Yes, sir.

Mr. Gray: Let's get the whole picture.

Examiner Stiles: Permission is granted to include that also.

The Witness: And when you put that in too, I believe that your statement that it is a big task to get the whole thing up is very true.

[fol. 2532] Mr. Holifield: I am not requesting that,—that is his request. I know that it would be more work for you.

Mr. Gray: Will you put it this way—that permission is granted and if possible, we will get the main line also?

Mr. Holifield: Yes, sir, that is all right.

Mr. Gray: I have no more questions on direct.

Mr. Miller: I have one or two questions.

By Mr. Miller:

Q. Does the Illinois Central Railroad operate any of these so-called deluxe trains through the state of Kentucky, and by deluxe trains, I mean trains with air conditioning in the cars, and so forth?

A. Yes, sir, air conditioned, but not stream lined. The coaches that go through from Louisville to New Orleans are described in our own literature and that used by the public as deluxe equipment, because it is air conditioned and it has reclining seats.

Q. Do you operate any trains wholly within the state of Kentucky? By that, I mean trains starting and ending their schedule within the state.

A. Only the mixed trains referred to in the list of the services that I gave.

Q. By mixed trains, you mean mixed passenger and freight cars?

A. Yes, sir.

Q. Are the cars on those mixed trains air conditioned?

[fol. 2533] A. No, sir, they are not.

Mr. Miller: That is all.

Redirect examination.

By Mr. Gray:

Q. On our main line running through the western tip of Kentucky, we do have streamlined trains that run through the state?

A. Yes, sir, however they do not have service.

Q. They stop at how many points in Kentucky?

A. Only at Fulton.

Q. What is the distance through Kentucky on that run?

A. I would say offhand approximately 50 miles. I will look it up. The distance operated wholly within the state of Kentucky is 37 miles of streamlined train service.

Mr. Gray: That is all on redirect.

Recross examination.

By Mr. McCarthy:

Q. Your mixed trains from Princeton to Henderson and Princeton to Hopkinsville do not render nearly the good service that your other trains render?

A. That is correct.

Q. Do you think it fair to ask that the fare be increased on those trains when you do not give such service as is already being charged by the Illinois Central on other trains?

A. If in any place there was a differential between the services of trains based on this claim that the service was not so good—now, this is merely my own opinion—but it [fol. 2534] would seem correct it should not be done, but since there is not, for uniformity for which we are striving in this case, there should be no allowance made for this service.

Mr. Gray: That brings up another question to me.

Redirect examination.

By Mr. Gray:

Q. Do both interstate and intrastate passengers ride on these mixed trains?

A. It is possible for them to do so by purchasing through tickets outside of the state.

Q. If an outside of the state passenger purchases a ticket to a point on this line, is there any other service he could get on the Illinois Central Railroad without riding these trains?

A. No, sir.

Recross examination.

By Mr. McCarthy:

Q. Your trains are terribly crowded now, aren't they?

A. Our reports show them to be only about 10 per cent standees. I am speaking only of trains that I have my own knowledge of—that is only between Louisville and Fort Knox.

Q. And these persons who have to stand on the trains do not get the same service they did several years ago when they didn't have to stand?

A. That is right.

Mr. McCarthy: That is all.

[fol. 2535] Redirect examination.

By Mr. Gray:

Q. Are those interstate or intrastate passengers?

A. To make an estimate, I would say not more than 10 per cent of them are intrastate.

Mr. Gray: That is all.

Recross examination.

By Mr. Holifield:

Q. Which,—of the standees?

A. Yes, sir.

Q. Only 10 per cent of the standees are intrastate?

A. Fully 75 per cent of all the standees are being Louisville and Fort Knox, and I would say that the majority of those people are soldiers who are going on furlough, and he would purchase at Fort Knox a through ticket to some point in the East. Those not going on furlough along that line seldom use the railroad because the bus service is so frequent.

Q. And that soldier purchases his ticket on a reduced rate, is that correct?

A. Yes, sir.

Q. By virtue of an agreement with the Federal Government?

A. Yes, sir.

Examiner Stiles: You are excused.

(Witness excused.)

Examiner Stiles: Call your next witness.

Mr. Oliver: I will call Mr. Tolleson.

[fol. 2536] E. M. Tolleson was sworn and testified as follows:

Direct examination.

By Mr. Oliver:

Q. Give your name, residence, and occupation.

A. E. M. Tolleson, Somerset, Kentucky, Superintendent, CNO&TP Division of Southern Railway System.

Q. State how long you have held your present position and, briefly, what your previous operating experience has been.

A. Five months. Assistant Trainmaster, Terminal Trainmaster, Trainmaster and Superintendent.

Q. Have you served as superintendent in any other territory other than Kentucky?

A. Yes, sir, I served as superintendent at Selma, Alabama, over the Mobile Division and Hattiesburg, Mississippi, over the NO&NE Railroad extending between Meridian, Mississippi, and New Orleans, Louisiana.

Q. And that experience as superintendent covered how long a period?

A. Three years.

Q. In your present position as Superintendent, over what portions of the lines of Southern Railway System do you have immediate jurisdiction?

A. The CNO&TP Division, extending from Cincinnati, Ohio, to Chattanooga, Tennessee.

Q. Are you generally familiar with operations on the [fol. 2537] other lines of Southern Railway System in the State of Kentucky?

A. Yes.

Q. Are you generally familiar with the operating conditions on other railroads operating in Kentucky?

A. Yes.

Q. In what states do the lines of Southern Railway System operate?

A. Mississippi, Alabama, Georgia, Florida, Tennessee, Kentucky, North Carolina, South Carolina, Louisiana, Illinois, Indiana, Virginia, Ohio and District of Columbia.

Q. How much of the mileage of these lines is in Kentucky?

A. Approximately 339 miles.

Q. Are the railroads operating in Kentucky confronted with any unusual difficulties or expenses in connection with passenger operations under present-day conditions?

A. Yes.

Q. Please illustrate what you have in mind as to "unusual difficulties and expenses in operation," leaving out of consideration for the moment troop train movements?

A. A heavy increase in the volume of passengers to be handled has necessitated additions in our porter and ticket office personnel at greater cost, with increased expense in lights and fuel, at all key points.

Transportation of materials incident to war has increased density of traffic on mileage operated within the State of [fol. 2538] Kentucky, resulting in passenger trains being delayed by congestion of freight trains and late passenger trains in turn further delaying freight trains, causing all trains to consume more time on line of road, with increased costs in:

1. Overtime paid train and engine crews, operators and others involved in the handling of trains; and

2. Fuel and other supplies.

Heavy mail and express movements, particularly to and from Military Camps, have in some cases brought about the daily handling of service cars (mail and express) from regular trains in separate sections, at double the costs in wages, fuel and supplies, whereas in normal times these service cars could be moved in one train with little difficulty; and, of course, extra cars handled on regular passenger

trains for accommodation of troop movements and other overflow travel often necessitates doubleheading at extra expense. As a matter of fact, we are now daily operating four extra, or service, sections of our regular trains on the CNO&TP Division (comprising 200.5 miles of the total of 337.1 miles operated by the Southern Railway System lines in Kentucky) to take care of the heavy movement of mail and express, and in order to expeditiously handle passenger carrying sections which, otherwise, would be over-burdened.

Q. At this point, do I understand it that you take your mail and express out of your regular trains and run them [fol. 2539] in extra sections, is that right?

A. Yes, sir.

Q. Are these extra sections full load cars or are they less than your full load trains?

A. As a day in and day out operation, they are less than the full load.

Q. How many cars do you handle normally, or can you handle normally in a passenger train on the CNO&TP Division?

A. Normally twelve cars because of the grade conditions.

Q. And these extra sections that you operate, how many cars do you handle in those extra sections?

A. They usually run from three to four cars, that is RPO, and then your storage mail, and then your express.

Q. Do you use a full crew in operating these extra sections?

A. Yes, sir.

Q. All right, proceed with your statement, please, sir.

A. The holding of regular trains at Terminals to pick up carload troop movements also enters into delays on line of road not conducive to normal economical operation; and the increased cost involved in the switching of cars to and from regular trains all over the system is large.

A large number of extra cars are handled on regular passenger trains for special troop movements alone, aside from the large number of extra cars handled for the overflow movement of troops on leave, etc., and the travelling public gen- [fol. 2540] erally. It follows that additional mechanical forces have been employed in the inspection of and repairs to passenger cars; and that the force necessary in cleaning, icing and watering this equipment has been greatly augmented. Too, engine house expense incident to the handling of the larger number of engines engaged in doubleheading,

etc., has increased and it has been necessary to draw passenger engines from other localities at additional expense for use in handling the business.

Q. Do the railroads encounter any unusual difficulties or incur any unusual expenses in the movement of troop trains? Please explain what you have in mind in this connection.

A. Yes.

Q. Please explain what you mean in this connection.

A. Many large encampments and training stations are located on Southern Railway System lines, involving much difficulty and expense in the handling of troops to and from them. Special train troop movements are given precedence over other trains with resultant delays to other traffic that brings about additional expense, despite the fact that our dispatching force has been doubled and many additional telegraph operators employed so that trains may be given orders promptly and moved with all possible rapidity. At the request of the War Department a special representative of either our Freight or Passenger Traffic Departments [fol. 2541] accompanies each special train troop movement over Southern Railway System lines, at added cost in travelling expenses, not to mention time lost from other duties.

Large and small movements are constantly in progress, some of them on extremely short notice, and in many cases it is necessary to haul the empty equipment to the loading points in special trains with freight crews, paid the higher freight wages, at extra out-of-pocket expense. Often loaded equipment is handled into camps at outlying points; the crews released and deadheaded or run light back to their home terminal at extra expense; and then twenty-four hours later it is necessary to run another crew light from the home terminal to handle this same equipment either loaded or empty to some other point.

The notice is so short at times on outbound loaded movements from the camps we are forced, in order to avoid delay, to have through freight train crews set their entire train of high class and important freight out in sidings near the camps, move the troop trains and meanwhile, send another freight crew light with caboose from the home terminal, a distance of some eighty to one hundred miles, to move the freight train to the terminal at double or more what it would have otherwise cost.

Much additional switch engine and hostler expense is involved in the spotting of baggage and kitchen cars for [fol. 2542] loading and unloading and in the breaking up and making up of special train movements; many times brought about by lengthy delays on the part of military authorities in carrying out their arrangements.

Our payments to foreign lines in equipment hire for use of their coaches are very high because of the fact that we have but a small surplus of coaches over and above our regular passenger train requirements and more than 50 per cent of our troop movements in coaches are handled in foreign line cars.

Additional forces have been added for the sole purpose of cleaning and servicing passenger equipment for troops, and often they work overtime hours at time and one-half pay in getting cars ready for outbound movement on short notice when they arrive from distant points via regular and special trains.

Since January 1, 1943, the CNO&TP Division alone has operated approximately 570 special troop trains, involving the use of 1400 engines and 5900 cars. All of these trains were operated with pool freight crews and freight engines (because of the scarcity of passenger engines and passenger crews as such). This, of course, meant that we were deprived of the use of this power and these crews, at least in one direction, in freight service, and, naturally, with the volume of freight traffic to be handled, this brought about much congestion in our yards, with resultant increased [fol. 2543] expense.

Q. Are all of the costs incident to troop train movements reflected in passenger expenses, or do some of these costs show up in freight expenses?

A. All costs incident to troop train movements are not reflected in passenger expenses; on the other hand some of the costs show up in freight expenses.

Q. Give some illustrations of the cost incident to troop movements which are reflected in freight service.

A. Because of being forced to use freight crews and engines to a large extent in handling troop train movements, the dispatch of freight cars from yards is naturally delayed, with resultant overtime and increased consumption of coal because of the congestion bringing about additional switching and delays to trains getting in to the terminal. Too, the side-tracking of freight trains in preference to troop

train movements naturally causes freight trains to be delayed and be longer in making terminal to terminal trips, and causing more fuel to be consumed at increased cost, and, in many cases, resulting in overtime being paid the freight crews.

Q. Is it or not a fact in your regular trains you have supplemented your regular train crews, or you have two train crews?

A. As to the division over which I have supervision, we have done this on all through regular trains; we have [fol. 2544] added the second train conductor, making two train conductors; and we have added the second train porter, making a total of two train porters, and we have added the head brakeman who is a white man, and who is an employee we have not heretofore employed on our trains.

Q. Do all of the passenger trains operated by Southern Railway System lines in Kentucky handle both interstate and intrastate passengers?

A. Yes.

Q. Is there any difference in the service afforded by your lines to intrastate and interstate passengers?

A. No.

Q. Based upon your experience and your observation, would you say that this is true as to all of the railroads operating in the State of Kentucky?

A. Yes.

Q. Are you familiar with railroad operating conditions generally in other states in the South?

A. Yes.

Q. Are the operating conditions in Kentucky similar to the operating conditions in other states in the South, or do they differ from the operating conditions in those states?

A. Operating conditions in Kentucky are similar to operating conditions in the other states in the South.

Q. You heard the testimony of Mr. Aiken, did you not?

[fol. 2545] A. Yes, sir.

Q. He testified as to his general knowledge of the defeat of the interstate rates by the purchase of intrastate tickets for portions of the journey or the payment of cash fares on trains. Have you any knowledge with respect to that situation as to the practice in the territory over which you have jurisdiction of the Southern Railway lines?

A. I listened very carefully to Mr. Aiken's testimony, and I have, since that time, checked this exhibit which re-

fects a setup whereby a passenger travelling from intrastate to interstate, so to speak, could get off at an intrastate point and rebuy, and, frankly, I don't know of any happening of that particular kind, but here is one thing that we have been troubled with on my division for quite some time, and that is the fact that passengers enroute to Cincinnati from Stearns, Kentucky, Somerset, Danville and Lexington will buy a ticket to Ludlow and stay on the train and ride over the river into Cincinnati.

Q. Where is Ludlow with reference to Cincinnati?

A. Ludlow, Kentucky, is just across the Ohio River on the Kentucky side from Cincinnati, and I would say, offhand, that it is about a mile and a half, or possibly a little more than that from Ludlow into the Cincinnati Union Terminal.

Mr. Miller: I move that the testimony just given in the record in answer to the last two questions be stricken as [fol. 2546] hearsay unless the witness can testify of these incidents of his own knowledge.

Mr. Oliver: I will ask the witness a question, Mr. Examiner, to clear up that point.

By Mr. Oliver:

Q. Do you know of your own knowledge that this situation does exist with respect to the purchase of tickets to Ludlow, and if you do know that, state for the record where you get that information?

A. I have never been on the train and seen a passenger actually do that, but as superintendent of the division and getting reports daily from the passenger conductors operating on that train, and one in particular citing to me an instance where he collected the difference between the intrastate and the interstate rates where the found the passenger riding into Cincinnati when he should have gotten off at Ludlow, I am forced to believe it is a fact.

Q. Are these reports made to you by the conductors in the course of the performance of your duties as superintendent of the CNO&TP, a division of the Southern Railway System?

A. Yes, sir.

Mr. Miller: I still move that the testimony be stricken as hearsay.

Examiner Stiles: The motion is denied.

Mr. Miller: Will you note an exception, please?

By Mr. Oliver:

Q. Please proceed with your statement about that and [fol. 2547] what the reports of your conductor show about that situation.

Examiner Stiles: I might call attention of counsel to the fact that under the new rules of practice, the practice at present is not to note an exception; it means nothing to say that on the record. If you want to press your objection, you must do so in your brief.

Mr. Miller: All right, sir.

Examiner Stiles: And that takes the place of the former noting of an exception.

Now, answer the question.

The Witness: The conductors, and I might say when I say "conductors", I mean each and every train conductor operating over our division to Cincinnati have individually and personally reported to me that that is a practice that is going on; that they have been unable to cope with it, and the thing that brings it about is this: all of our through trains, particularly those through trains that stop at those points in Kentucky that I have named in my testimony, are crowded, they are crowded to the extent of passengers standing in the cars; the conductors are, therefore, unable in the short time it takes the train to move from Ludlow to Cincinnati to get to those passengers and collect the additional fare from them before the train reaches the Cincinnati Union Terminal. Our conductors have operated on [fol. 2548] the division for many years; they have learned their duties through observation; they tell me that they get to Ludlow and about five people will get off when they know that they have loaded some 15 or 20 passengers for Ludlow because they have gotten their tickets for that point, and they know that the practice goes on. It is not hearsay on their point; it is an actual fact.

Examiner Stiles: How far is Ludlow out of Cincinnati?

The Witness: It is just across the river, sir; I guess that it is about a mile and a half or it may be two miles from Ludlow into the Cincinnati Union Terminal. It is true that we show that distance in our schedule as 3, but that 3, I am not trying to gainsay that is correct in the time-

table, but I would say that by actual measurement, it is not more than two miles, but the fact is a conductor can't work six or seven crowded coaches with people standing in the aisles, and in the vestibules in a distance of three miles to find where the passenger is that didn't get off at Ludlow.

Examiner Stiles: In other words, it is only a few minutes run in any event from Ludlow to the Cincinnati Union Terminal?

The Witness: Yes, sir, I would say less than five minutes at any rate.

By Mr. Oliver:

Q. Would you definitely know the passenger that had paid his fare only to Ludlow and remained on the train?

A. It would be difficult to do it; in times when passengers [fol. 2549] were always able to find a seat in a coach, we were able to use a hat check system, but the only way they could get their fares now and keep some people from beating the railroad out of their fare is to collect the tickets as the passengers get on the train, and that is what they do on my division in either tickets or cash fares. On one particular case where I have stated the incident that happened, and I will be glad to name the conductor that told me about it if it is necessary—he is the local chairman of the conductors over there, and he was operating on a local train where they had only two cars, and for that reason he was able to catch the passenger between Ludlow and Cincinnati, because the train was not overcrowded, and on that occasion he collected the difference in the fare.

Q. The man that indulges in that practice pays the intrastate fare to Ludlow instead of the interstate fare of 2.2 cents per mile to Cincinnati from wherever he starts his journey, is that correct?

A. Yes, sir.

Mr. Oliver: That's all, I believe, for this witness, Mr. Examiner.

Cross-examination.

By Mr. Holifield:

Q. The fellow that is practicing what you are complaining of is getting to ride 2½ or 3 miles and doesn't pay for it at all?

[fol. 2550] A. That is right, sir.

Q. And the changing of the passenger fare wouldn't bar that dishonesty?

A. No, sir, but if I may make this observation,—and it is purely my own observation—I think the reason they do that is that the intrastate fare to Ludlow is very attractive, it is low; they are going to Cincinnati all right, but they have learned by travelling to and from those points that there is a possibility, or, in fact, a probability of their being able to get into Cincinnati without their being detected, and because of this low fare to Ludlow, they buy their ticket to Ludlow and ride on into Cincinnati.

Q. You also know that there is electric car service from Ludlow to Cincinnati?

A. Yes, sir.

Q. And at a very moderate rate?

A. Yes, sir.

Q. And all they have to do is to step off the train at Ludlow and get on that electric car if they didn't want to cheat the railroad out of this additional mileage?

A. The bus that they would catch just carriers them to Fourth and Sycamore whereas if they go into the terminals, they are closer to many points in Cincinnati than if they rode the bus over to Cincinnati from Ludlow.

Q. But if they raised the fare, it wouldn't keep men from [fol. 2551] doing what you are complaining about, would it?

A. That is the situation, and I would say that they would have to pay more in buying their ticket to Ludlow than now.

Examiner Stiles: Would there be any inducement for them doing it if the intrastate fare were raised?

The Witness: I don't know about that.

Examiner Stiles: As I understand it, the difference in fare would be about 7 cents between Ludlow and Cincinnati if we raised the intrastate fares to 2.2 cents per mile?

The Witness: I got $4.25 as against $4.36 as shown in Mr. Aiken's exhibit.

Examiner Stiles: Then they would have to pay a local transportation fare to get across the river on the bus that you spoke of?

The Witness: Yes, sir, that is right.

Redirect examination.

By Mr. Oliver:

Q. You didn't mean to indicate the only saving was the saving in the fare for the journey from Ludlow into Cincinnati, did you, when you said in answer to the General's question that the passenger merely beat you out of that additional mileage? Isn't it a fact that the passenger from Danville, Kentucky, for instance, to Ludlow would pay 1.65 cents per mile for a one-way trip instead of 2.2?

A. Yes, sir.

Q. And then he saves more than the 7 cents, doesn't he? [fol. 2552] A. Under present conditions?

Q. Yes, sir.

A. Yes, sir.

Q. What would be the saving, roughly, say, from Somerset, Kentucky, into Cincinnati by that scheme?

A. I don't know whether I have got it figured out here or not.

Off the record.

Examiner Stiles: Off the record.

(Discussion outside the record.)

Examiner Stiles: On the record.

By Mr. Oliver:

Q. What is the mileage, Mr. Tolleson, from Somerset, Kentucky, to Ludlow,—have you got it before you there?

A. It is approximately 160 miles.

Mr. Oliver: I thank you, sir. That is all.

Examiner Stiles: Do you have any further questions?

Recross-examination.

By Mr. Holifield:

Q. The revenue that you are now deriving from the transportation of passengers is sufficiently large to contribute the passenger train quota to expenses and a reasonable profit, is it not, of operating a railroad?

Mr. Oliver: I don't believe that this witness is qualified to answer that question. He can answer if he wishes.

The Witness: I do know that the revenues from passenger trains as of today are greater than they were during the [fol. 2553] depression days, or I would say prior to 1941.

By Mr. Holifield:

Q. Even in depression days you made more money by having a low passenger rate than by a high rate, didn't you?

A. I don't think that I am prepared to answer that question, sir.

Mr. Holifield: All right.

By Mr. Marks:

Q. Is your Ludlow passenger traffic very heavy from down the line?

A. Do you mean of people destined to Ludlow proper?

Q. That buy tickets to Ludlow.

A. Yes, sir, quite heavy.

Q. Would it justify you in segregating those in a separate coach?

A. That would be impossible under present conditions.

Q. Don't you separate your passengers by destinations when they get on a train at Cincinnati?

A. We try to keep short passengers in the head coaches, but they wander all over the train if they possibly can and they usually do. It is an impossibility under the present-day conditions to confine passengers to any one location in cars or in the trains.

Q. Don't you make some effort to see that those people get off the train at Ludlow instead of going on over into Cincinnati?

[fol. 2554] A. Not any more than we are doing now, sir. We do our best.

Q. Is it your position that it is more expensive to handle passenger traffic in Kentucky than in other states on your line?

A. No, sir.

Q. Now, you spoke about the increased cost of operating. Are you contending that the number of additional employees and man-hours that are now put in in operating your passenger trains is greater than the increase in your passenger miles?

A. Do you mean the ratio of expense to miles?

Q. Yes.

A. No, I am not contending that. I really have no figures on that particular thing.

Q. Isn't it more reasonable that your man-hours should increase as your passenger hours go up?

A. What man-hours?

Q. Of the employees on your trains?

A. No, sir. As the miles increase, you say?

Q. As the passenger miles increase.

A. You mean if we operate additional passenger trains we naturally have to have more employees to man them—is that what you mean?

Q. No, I mean this—in the Kentucky State Case, an exhibit was put in showing in the year 1938 your passenger miles on the CNO&TP in Kentucky were 34,383 and in 1942, 130,998 miles, more than four times as many. Have your [fol. 2555] man-hours in handling those passengers increased anything like four times?

A. I would be afraid to say. I have just pointed out a specific case where that additional section of the train that we are operating creates additional miles, and at the same time creates additional man hours. These additional employees that we put on our trains, the CNO&TP particularly are employees over and above any increase in passenger miles on those particular runs. We practically doubled the force on these particular trains and didn't increase the mileage any, in an effort to cope with the proper handling of the traffic.

Q. And when you doubled your employees, you about quadrupled your passenger miles?

A. You are quoting from an exhibit there and I have no figures to offset that.

Examiner Stiles: Off the record.

(Discussion outside the record.)

Examiner Stiles: Back on the record.

Mr. Marks: That is all.

By Mr. Holifield:

Q. On page 3, you enumerated various additional expenses that you have to pay out for the purpose of operating troop trains?

A. Yes, sir.

Q. Troop train operations are not unprofitable to you, are [fol. 2556] they?

A. No, sir, I don't think so.

Q. And you don't wish to add that extra expense upon the ordinary passenger trains that carry civilians practically altogether, do you?

A. No, sir, I don't wish to.

Mr. Holifield: That is all.

Mr. Miller: I have one question.

By Mr. Miller:

Q. Do these troop trains generally move in intrastate or interstate commerce?

A. Interstate in most cases.

Q. And the movement is relatively small in comparison so far as intrastate commerce is concerned?

A. Intrastate is relatively small compared to interstate.

Mr. Miller: That's all.

Examiner Stiles: Any redirect examination?

Mr. Oliver: No, sir.

By Mr. Marks:

Q. On which of your northbound trains do you find your Ludlow traffic the heaviest?

A. It is heavier on practically all of them; there is a heavy travel to Ludlow from the four points I mentioned on practically all our trains.

Q. And you sell a ticket and take it up on a train that doesn't stop at Ludlow?

A. No, No. 2 is not scheduled to stop at Ludlow, but I believe you will find that is the only thing that doesn't [fol. 2557] stop at Ludlow.

Q. Does your train No. 28 stop at Ludlow?

A. Yes, sir.

Q. Your timetable doesn't so show it?

A. (No response.)

Mr. Marks: That is all.

Examiner Stiles: Off the record.

(Discussion off the record.)

Examiner Stiles: On the record. You are excused.

(Witness excused.)

Examiner Stiles: We will recess now until 2 o'clock this afternoon.

(Whereupon, at 12:30 o'clock p. m., on Wednesday, September 8, 1943, the hearing was recessed until 2:00 o'clock p. m. of the same day.)

Afternoon Session

The hearing was resumed pursuant to recess. 2:00 p. m.

Examiner Stiles: Call your next witness, please.
Mr. Oliver: I will call Mr. Tassin, please.

J. S. Tassin, was sworn and testified as follows:

Direct examination.

By Mr. Oliver:

Q. Will you give your name to the reporter, and state [fol. 2558] your official railroad connection?

A. My name is J. S. Tassin; General Statistician, Southern Railway System Lines.

Q. How long have you held your present position, and what previous experience have you had in railroad statistical and accounting work?

A. I have held my present position since 1932, and I entered railroad service in 1903. All my experience has been in various departments of the accounting department of one or more of the Southern Railway System lines.

Q. You have prepared, I believe, an exhibit which shows, among other things, the loss which the Kentucky lines are sustaining as a result of the disparity between the interstate and intrastate fares in Kentucky and other statistical data which bears upon the reasonableness of the interstate rates, have you not?

A. Yes, sir.

Q. Now, will you proceed to discuss your exhibit, taking it up page by page with such explanation as may be necessary of the showings there made?

(Exhibit 6, Witness Tassin, marked for identification.)

The Witness: Pages 1 and 2 sum up the statistical findings and will be found self-explanatory.

I will address myself to the remaining 29 of these 31 pages and point out the significant figures of each statement.

[fol. 2559] Page 3 establishes the fact and extent of revenue loss. For the seven months ended June 30, 1943, the loss by the seven roads parties to this petition aggregate $306,951; rated to a year's basis, it is $526,200.

I show in comparison with this latter figure a loss of $495,755 for the year ended June 30, 1943, and $426,586 for the year ended February 28, 1943, showing that the loss is growing under existing conditions.

Mr. Marks: Pardon me for the interruption there, but where you use the word "loss", what do you mean by that?

The Witness: I mean the loss in revenue, the sum of revenue that would have accrued to the carriers had the passenger business within the state of Kentucky moved on the same fares as interstate.

Mr. Marks: Isn't it just a mathematical calculation of the present fares and the proposed fares against the actual traffic?

The Witness: It is a mathematical calculation of the present fares and proposed fares against the actual traffic during these periods.

Mr. Marks: You are assuming the same amount of traffic would have moved?

The Witness: I am taking the traffic that actually moved, the traffic subject to this case here.

Mr. Marks: And you are assuming none of it would have [fol. 2560] been diverted by the higher fares?

The Witness: I am assuming that none of it would have been diverted by the higher fares.

Mr. Marks: That is all.

By Mr. Oliver:

Q. Insofar as the losses shown for the CNO&TP Railroad Company and the Southern Railway Company proper, I take it that those figures were prepared by you or under your supervision?

A. They were under my supervision and prepared at my direction.

Q. Where did you obtain the figures for the other Kentucky lines shown on that statement?

A. From the Chief Accounting Officer of each railroad, or as directed by the Chief Accounting Office of each railroad.

Mr. Oliver: Mr. Examiner, may I explain at this time that we have present here today accounting representatives of the Chesapeake & Ohio Railroad and the Illinois Central Railroad, the L&N Railroad Company, and the Nashville, Chattanooga & St. Louis Railway Company, who will be able to testify as to the accuracy of the figures presented on behalf of those railroads. Mr. Tassin can only testify with respect to the figures given for the Southern Railway Company, and the Cincinnati, New Orleans & Texas Pacific Railway Company, so if there are any questions as to the showings made on page 3 for the other railroads, we have accounting officers of those lines present who will be able [fol. 2561] to answer any questions for their respective companies.

By Mr. Oliver:

Q. Proceed, Mr. Tassin.

A. Against this figure of unrealized revenue, shall I call it, on page 4 I show the result of passenger operation for the years 1936 through 1942.

Examiner Stiles: Does the Southern System embrace other than lines 8 and 13?

The Witness. The Southern System has other lines besides 8 and 13 that do not operate in the state of Kentucky.

Examiner Stiles: I meant on this page.

The Witness: On this page, no, sir, the CNO&TP and the Southern in Kentucky are two separate and distinct properties; they both belong to the Southern Railway System.

Examiner Stiles: Those are the only lines on this page which are included in the Southern System?

The Witness: That is correct.

Examiner Stiles: The Southern Railway System lines?

The Witness: That is correct, yes, sir.

Now, this page 4, in the face of this loss in revenue shows that these lines operating in Kentucky are chronically in need of additional revenue. The fact that——

Examiner Stiles: Are these in that manner distinguished from roads in other states?

The Witness: No, I think that is generally true, and it is a matter of common knowledge that the railroads all over [fol. 2562] this country are chronically in need of additional revenue, and, for that reason, I can't see why it would give

alarm because the railroads have a good year or two, why anyone should become excited about the fact that in 1942 the railroads had an income and not a deficit, when in the previous six years they encountered sizeable deficits, the cumulative deficits 1936 to 1941 being $136,387,862, and we would have to have a dozen years like 1942 to equalize that. I don't want to be misunderstood. This case is not brought to recoup past deficits, but the object in showing that comparison on this page is merely to show how unusual is a good year in railroad experience.

Mr. Miller: May I interject a statement right there. We do not object to their having a good year, Mr. Examiner, but we object to your raising your rates in a good year.

The Witness: I will let counsel deal with that in his argument.

By Mr. Oliver:

Q. Will you proceed, Mr. Tassin, please, sir?

A. Now, on page 5——

Q. Mr. Tassin, before you leave page 4, will you state, please, why you started with the year 1936 rather than going back of that year?

A. Well, there are two reasons for that—one was because there was an adjustment of passenger fares beginning in [fol. 2563] 1936, as I understand, and the second reason is because the year 1936 is the first year in which the Interstate Commerce Commission required a reporting of the passenger deficits.

Q. In other words, that is the first year in which you made an actual separation as between freight and passenger?

A. No, we have always made, as far back as 1921, we have made a separation between freight and passenger, as to expenses, but beginning with the year 1936, the Interstate Commerce Commission required us to carry that down through to establish whether the passenger was producing an income or a deficit.

Now, in proof of the fact that these passenger deficits are in the nature of a burden upon freight, and that the combined services are not realizing an adequate return, I have prepared this page 5 for Class 1 railways of the Southern region as a whole, covering the years 1921 through 1942, showing that for the average in that period

that these roads earned only 2.48; that for the average in that entire period from 1921 through 1942, the roads averaged 3.23 per cent return on their investment, and for the period 1931 through 1942, they realized 2.48 per cent, whereas if we got back as on line 18 to the period 1921 to 1930, they earned 4.2 per cent, so the combined result of freight and passenger operations over a proper period shows that these railroads are chronically in need of additional revenue.

[fol. 2564] Examiner Stiles: Explain your investment in railway property used in transportation service.

The Witness: That is the figure that is annually returned to the Interstate Commerce Commission in Table 211-N, in Schedule 211-N of the annual report to the Interstate Commerce Commission, plus the amount of cash, materials and supplies on hand at the end of the year.

Examiner Stiles: Am I to understand that is the book value and may or may not be the value as found by the Commission for rate-making purposes?

The Witness: I don't like to call it book value; it is book investment or book cost, if you please, and I shall offer evidence later to show that it is less than the amount of capital that would have to be raised at the current time to produce the properties that are producing these revenues. If we want comparisons of like with like, we must state the property in terms of the current dollars, because we are judging it in the terms of the current lucrativeness in terms of the current dollars.

Page 6 takes the seven roads as a group and shows that for this period, 1921-1942 the group of roads, of seven roads operating in Kentucky owned 4.3 per cent. That, of course, is due to the inclusion of such roads as the C&O earning 6.94, and the CNO&TP earning 5.50.

Examiner Stiles: Is the answer that you made to my last [fol. 2565] question also applicable to the investment column on page 6?

The Witness: It is.

Turning now to page 7, I take the returns earned by these seven roads individually and rated them in accordance with mileage, first, for the entire line, and, secondly, for mileage in the state of Kentucky. So rated on basis of the entire line, the return is cut down to 3.97, whereas in the

state of Kentucky it is 4.31, which corresponds very closely to the result of 4.30 on page 6.

Examiner Stiles: Read that answer.

(Record read.)

Mr. Holifield: I want to ask a question at this point. What do you mean by that "weighting"?

The Witness: All of these roads are not of the same relative importance; some of them are considerably larger than the others; take the C&O, for instance, with 3,092 miles, with the CNO&TP's 337 miles, so the object of this computation is to equalize for the difference in the relative importance, shall I say, insofar as that is reflected by length of line.

Examiner Stiles: Did you multiply the figure in the "miles" column by the figure in the "return" column to get the figure in the "weighting" column?

The Witness: Yes, sir, and I divided the miles into the weighting to get the weighted average rate of return.

[fol. 2566] Now, page 8 states the same proposition from a different angle. I have shown on page 7 a shortage in rate of return as measured by the 5¾ per cent that is usually utilized, but on page 8 I asked myself this question: by what per cent would revenues have to be increased in order to give these roads a 5¾ per cent return on their investment? Here to revenues and income received, I add a 5¾ per cent return on investment, and then divide that by the gross income receivable, and that shows that on basis of the entire system mileage, these roads would require 8 per cent additional revenue if they are to realize a 5¾ per cent return on the investment. Weighted in accordance with their mileage in Kentucky, the increase would be 6 per cent —that is, 6 per cent more revenue.

Mr. Miller: That is passenger only?

The Witness: Oh, no, this is total revenue.

Examiner Stiles: On the previous page, was it the total revenue also?

The Witness: Yes. All these returns are, and as I stated, the object of this showing is to show the revenues we receive from freight do not compensate us for the losses entailed by passenger. Passenger is a burden upon freight.

Now, looking to establishing the conservatives of the measure I have used, namely, investment in road and equip-

ment used in transportation service, as annually returned [fol. 2567] to the Interstate Commerce Commission in Schedule 211-N in the annual reports of the Commission, plus cash and materials and supplies on hand, that is the base cost measure I am using. I am nowhere dealing with values in my testimony,—I am dealing with costs.

Mr. Marks: Do you take into consideration depreciation?

The Witness: No, I do not, because depreciation is an element of cost, and from a standpoint of cost it is not to be deducted. There is a theory that 50 per cent operation on a straight life basis is 100 per cent efficiency. I say if that theory is true that 50 per cent of an accrual of depreciation is frozen investment and not loss, it is an essential part of costs that never has to be collected from the public because the railroads are supposed to have 100 per cent efficiency or be 100 per cent efficient when they are operating at 50 per cent of their life, average 50 per cent of the various elements of property entering into their composition.

By Mr. Oliver:

Q. As I understand it, you can compare the showing made on page 9 with the investment in railway property used in transportation services as shown on page 6, and you demonstrate by that showing that the figures used on page 6 are conservative figures?

A. Yes sir. If you want to produce those properties today that are producing this revenue, you would have to raise from 10 to 11 per cent more money than is recorded in [fol. 2568] these investment figures that I have used.

Mr. Marks: This represents an average for 22 years on page 6, doesn't it?

The Witness: That is correct, yes.

Mr. Marks: And the figures on page 9 is merely not the average of those 22 years, but on the date of January 1, 1940.

The Witness: Yes, because that is the date as of which we have this appraisal made by the Interstate Commerce Commission showing how much money would be required today to produce these properties whose investment stands as a lower figure, about 90 per cent of it.

Mr. Marks: But if you took this average back for another 20 years, you would have a lower average?

The Witness: I am comparing it with the 1940 investment of the Commission, but not with the average investment. If you had the appraisal figures year by year, you could work it out backwards, but we only have them sporadically.

Mr. Marks: How can you say your investment for this average of 22 years is lower because it would appear that you will add to your plant as you go along? Let me put it this way—isn't your investment for 1942 higher than your reproduction cost shown on page 9?

The Witness: Do you mean for 1940?

Mr. Marks: Yes, make it 1940.

[fol. 2569] The Witness: No, it is less. That is what I am testifying to.

By Mr. Oliver:

Q. On page 6 where you show investment in property used in transportation service, as of what date are those figures made?

A. On page 6?

Q. Yes, sir.

A. Those, as the title shows, are "Average annual rate of return—1921-1942,"—that is the caption there now. I can see the confusion that it has created in Mr. Marks' mind here,—that I have taken an average investment and divided it into an appraisal of one year, 1940. That, of course, would have been in error—I should have divided the 1940 investment into the 1942 appraisal, and I will ask permission to check back those references and make such corrections as may be found necessary.

Mr. Marks: Do you have the figures for January 1, 1940, with you, based on the book value as shown on page 6?

The Witness: I have not the book value for the year 1940 of these individual roads with me, but on page 5 I have set forth each of the years for the Southern Region as a whole.

Mr. Marks: But that is the Southern Region there.

The Witness: Yes sir, I have them by individual years, but I have not that with me for these seven roads.

Mr. Marks: Can you furnish that?

[fol. 2570] The Witness: Furnish what?

Mr. Marks: So we will know.

The Witness: By individual years for these seven roads?

Mr. Marks: Let's take the book value investment for the seven respondents as of January 1, 1940.

Mr. Miller: I think my own witness will have the evidence tomorrow, and if he wants to stay around and verify it, he can.

The Witness: I am going to stay around all right.

Mr. Marks: We will withdraw the request pending his being able to put it in.

Examiner Stiles: Then if you find that information is not given tomorrow, if you want permission to file a supplemental statement, you will ask me again.

The Witness: I am going to tell you frankly right now, while I don't doubt the accuracy of those figures, I want to recheck them at the source.

Mr. Miller: If you want to check them, all right.

Examiner Stiles: You want permission on the record to file a corrected page 6, is that it?

The Witness: A corrected page 6, and carry those corrections through such subsequent pages as may be affected.

Examiner Stiles: Is ten days sufficient time-

The Witness: Yes sir.

Examiner Stiles: Permission is granted and you will send [fol. 2571] two copies to the Secretary of the Commission with the advice that you have also served copies on the other counsel of record.

Mr. Marks: I wonder if it wouldn't be in order for him to show for each year so we can check the average?

The Witness: I am entirely willing to do that.

Mr. Marks: That is for the information shown on page 6.

The Witness: I have the information in my office: What you want is the figures for each year that adds up to the total?

Mr. Marks: That is correct.

The Witness: I can do that.

Examiner Stiles: For what years?

The Witness: 1921 through 1942.

Examiner Stiles: Proceed.

By Mr. Oliver:

Q. Have you any further comment on page 9, Mr. Tassin?

A. No, because the purpose of the page is clear; it is to establish the conservativeness of the investment figure.

Q. Figured as a measure of the operating results?

A. Yes. On page 10 for each of the years 1936 through 1942, I show a comparison of freight and passenger operating ratios, and all the way through with the exception of the year 1942, the passenger ratio shows that you spent more than $1 to earn $1.

[fol. 2572] Examiner Stiles: How about 1941 in the case of the CNO&TP and the Southern?

Mr. Oliver: That is right.

The Witness: In 1941 and 1942, yes, there you had a slight difference. This operating ratio, as everyone knows, is obtained by dividing the operating revenue into the operating expenses. It is not a complete ratio in that it does not include taxes and net rents payable. You might call that an outgoing ratio, and I furnish a comparison on page 11. Here, again, we see to what extent the passenger is a burden on the freight traffic.

Mr. Miller: Just to get the distinction between pages 10 and 11, the ratios on page 11 would include in the expenses taxes and rents.

The Witness: Taxes and net rents payable.

Mr. Miller: That is right. I understand it now.

The Witness: On page 12, I show the cents per passenger carrying car mile, cents of revenue earned, showing what classifications of revenue are included, namely, passenger, sleeping car, parlor and chair car, and other passenger train revenue, dining and buffet. Looking at line 14, taking 1936 as an index, we show a rather normal situation, I should say, for the years 1936 to 1940, inclusive, and a sharp increase in 1940, and then a still sharper increase in 1942, showing the improvement in revenues received from this class of [fol. 2573] service.

Mr. Holifield: That is for the passenger service?

The Witness: That is from the passenger fares, the passenger carrying cars, the revenue referred to as the rear end cars in distinction to the front end or baggage, express and mail, sometimes called and referred to as the head end cars. I give the revenue per car mile for the head end cars, namely, baggage, mail, and express on page 13, and you see a normal picture there, I would say practically all the way through. The head end, generally speaking, as you will observe, are much better revenue producers per mile than the passenger carrying cars—they are earning 26 cents on the average as against 21 cents on page 12, and if you eliminate

the exceptions for the years 1941 and 1942, the average picture or normal picture for a passenger carrying car is around 16 cents a mile as against around 26 cents a mile for the head end cars. Of course, while the purpose of this case is not — improve the relation between the two kinds of cars carried in the same train, there is a corollary benefit that the two would be brought closer together, just as any improvement in passenger revenues as a whole will improve the relation between passenger and freight rate ratios.

Examiner Stiles: This is cents per car mile?

The Witness: Cents per car mile.

Examiner Stiles: On pages 12 and 13?

[fol. 2574] The Witness: On pages 12 and 13.

Examiner Stiles: And you just took 1936 as 100 in your index list and related the others to that?

The Witness: That is right.

By Mr. Oliver:

Q. In the title at the top of page 13 after (109), the word "miles" should be "milk", should it not?

A. Yes, sir; that is war time stenography.

Q. Proceed.

A. Page 14 shows the revenue per passenger mile in cents earned in coaches; that excludes commutation.

Examiner Oliver: Is that line 12 a total or is it an average?

The Witness: It is the average for the total of the seven roads. That compares with the 1.65 fare used by some roads and 2.2 fare used by other roads, resulting in these average figures, and, of course, it is weighted, I shall say, by round-trip and any other conditions that enter into the picture.

By Mr. Oliver:

Q. Does empty mileage enter into it?

A. No, this is per passenger travelling one mile.

Page 15 gives a similar comparison for the revenue per passenger mile in parlor and sleeping cars, showing the result of a check of the situation in those cars.

Examiner Stiles: Those are system figures?

The Witness: Those are system figures for each of the [fol. 2575] individual roads. I might say that there is no

way of separating them so far as I know between state and interstate, between interstate and intrastate.

Now, page 16 gives the revenue per coach mile, and page 17 gives the revenue per sleeping and parlor car mile. All of these statistics are——

Examiner Stiles: That is the revenue only from the sleeping and parlor car services.

The Witness: That does not include what is paid for the berth; it is the fare for travelling in the sleeping car instead of a coach, the increased fare. The figure does not include anything paid for the berth.

By Mr. Oliver:

Q. In other words, it is the railroad fare and not the Pullman fare?

A. It is the railroad fare and it is not the Pullman fare; it is the revenue realized by the railroad from travel in Pullman cars.

On page 18, I show the total railway tax accruals for the years I am considering; I have used 1936 as index No. 100, and show the sharp increases in taxes going up to an increase of 394 per cent in the year 1942.

On page 19, this comparison with respect to taxes is——

Examiner Stiles: Might I ask you before you leave page 18—In connection with that sharp increase, is that in part because taxes were based on revenue?

[fol. 2576] The Witness: It is the taxes actually paid and it is income and excessive income taxation that is partly responsible, largely responsible for it.

On page 19, I make the same comparison, but restrict it to that portion of taxes which is ascribed to passenger under rules prescribed by the Interstate Commerce Commission, showing that the ratio of increase is not as great.

On page 20, I show the ratio of increase——

Examiner Stiles: You said this shows the ratio of increase is not as great on the passenger as on the previous, which included all operations?

The Witness: Yes, sir, that is correct.

Examiner Stiles: What significance do you attach to that in relation to this case?

The Witness: The fact that the rules of the Interstate Commerce Commission for separating these taxes, rely

upon the relation of their separation of freight and passenger, and freight gets the lion's share.

Mr. Oliver: The lion's burden it would be instead, wouldn't it?

The Witness: Yes, sir, the lion's burden. In other words, another method of making the separation might show a different picture.

On page 20, I show the increase in hourly compensation of all employees. This takes all employees—those em-
[fol. 2577] ployees on a daily basis are reduced to hours by multiplying by 8 and dividing the total number of hours so obtained into the total amount of compensation to show the over-all picture. Taking 1936, as 100, we find 1942 standing at 346.

On page 21, I offer a similar comparison with respect to increasing cost of materials and supplies, including fuel,—using October 1, 1936, as Index No. 100: on December 1, 1942, there was an increase of 28 per cent in the class of materials and supplies, including fuel.

Now, in the ensuing pages, I take up a series of comparisons to help us to understand the statistical picture of passenger miles per train mile or per car mile. The rules of the Interstate Commerce Commission require a separation of freight car miles as between loaded and empty. No separation is made of passenger car miles between deadheaded empty and open to the public for travel. The statistics reveal an enormous amount of deadheaded passenger equipment.

Examiner Stiles: The miles of empty passenger equipment are not reflected in this?

The Witness: The miles of empty passenger equipment are reflected in this, but are not separated, so that we have——

Examiner Stiles: Let me see if I understand you. Just a minute. You arrive at revenue passenger mile per train mile?

The Witness: Yes.

[fol. 2578] Examiner Stiles: In arriving at that, did you use empty car miles?

The Witness: They are included in the divisor and that is one reason why we show such a low number of passengers per train, ranging from 52 in 1916 to 81 in 1918. I have taken these years of World War No. 1 to show the

influence of wartime conditions on passenger travel, but I am explaining that you have this two-fold situation—one is that the statistics represent the balance between passengers travelling in cars open to the public and cars that carry no passengers because they are being transported deadhead for use in moving troops and so forth. The figures help us in two ways: either the movement of deadhead equipment is more serious than some of us think, or the overcrowding is less serious than some of us think. Now, no one will deny that on certain days there is a rush on the transportation facilities that overcrowd trains. There is also a rush on the better trains that overcrowds those particular trains, but by and large, taking the picture as a whole, the statistics lead us to infer that the day by day overcrowding is not as black as it is painted.

Now, on this page 22, for the average of the five years 1916 through 1920, the average train carried 68 passengers.

On page 23, from 1921 through 1930, it had jumped to 50 passengers per train.

[fol. 2579] Page 24, from 1931 through 1940, shows a further shrinkage to 39 passengers per train, and then if you take 1921 through 1940, in round figures, it will be 46; 1916 through 1940, it will be 51.

Now, take the year 1941 alone, on page 24, line 15, it rises to 63 passengers per train, and in 1942, to 120 passengers per train, in round figures.

Mr. Marks: Do you take into consideration the length of the train?

The Witness: I am going to give you a comparison per car later on. These are per train, and, naturally, a train is a train, and no consideration is given to the length of one train compared with another.

Mr. Marks: Isn't it a fact there are trains much longer now than in the so-called normal period?

The Witness: Yes, we are carrying more cars to the train, but to check that picture, I put this on a per car mile basis beginning on *May* 26, and during the first——

Examiner Stiles: Were you going to say anything about page 25?

The Witness: No, because that merely supports the figures for 1941 and 1942 that I gave on page 24. It is true that in addition to the showing that I have mentioned on page 25, I also show the results from January to April,

1943, showing that this increase is still going on in passengers per train.

[fol. 2580] Beginning with page 26, I put them on a passenger per car basis. In the five years ended with 1920, we had 18 passengers per car; there were no standees in those cars.

On page 27, for the period ended 1930, ten years, that decade that ended in 1930, we show——

Mr. Holifield: In 1920, do you mean that you average 18 to the car?

The Witness: That is right.

Mr. Oliver: 1916 to 1920.

The Witness: And in the decade ending with 1930, there were only 12 to the car; and in the decade ended with 1931, there were ten to the car; and in 1941, there were 15 to the car; and in 1942, 23 to the car.

Page 29 will show that in the first four months of 1943, there were 29 to the car.

Now, as I have said, these petitions are furnished for the purpose of showing the effect of two different things—the deadheading of empty passenger equipment which dilutes the passengers per train mile or per car mile, and the actual increase in passenger traveling.

Examiner Stiles: When you arrive at these average passengers per car, that is based on coaches and Pullmans?

The Witness: Yes, sir.

Examiner Stiles: And observation cars?

The Witness: Ending with page 29, that is the fact.

[fol. 2581] Examiner Stiles: Are dining cars figured in there?

The Witness: Yes, sir, all passenger carrying cars are figured in that; it is the space for passengers made available for their use.

Examiner Stiles: But you don't transport passengers in dining cars—that is, they are not assigned seats there?

The Witness: No, but they occupy seats there.

Examiner Stiles: So every time you figure the dining car in on the train, you really get a lower number of passengers per car than there actually are of passengers in cars where needed.

The Witness: That dilutes the number of passengers per car. I am trying to have these things thoroughly understood because they are so often misunderstood.

Page 30 limits the comparison to the coaches only. That clears up what has just been mentioned, and that shows a range from as low as twelve passengers per coach in 1938 to as high as 31 passengers per coach in 1942, with an average of 19.

Examiner Stiles: As high as 31?

The Witness: The lowest is 12 in 1938 and the highest is 30.85, or 31, in round figures, in line 12, in 1942.

Examiner Stiles: But you are taking the low figure for an individual road?

The Witness: No, 12.33 in line 12 in 1938.

[fol. 2582] Examiner Stiles: I see.

The Witness: I am just giving the range of experience there. Again, these figures are diluted by any coaches dead-headed empty—the mileage of those coaches not being available.

Examiner Stiles: On page 29, that increase might be partly due, in fact, might it not, to the fact that the companies are now selling seats in the observation cars and club cars? That would help to bring the number up, wouldn't it?

The Witness: Yes, sir, it would obviate the same passenger using two seats; you would have two passengers for the two seats.

Examiner Stiles: Now, on page 30, no dining cars are reflected there?

Th Witness: This is coaches alone.

Examiner Stiles: Although the coach passengers use the dining cars the same as the Pullman car passengers?

The Witness: Yes, sir. I am trying to give the full meaning of these statistics because they seem to be much misunderstood.

On page 31, I give a similar comparison for sleeping and parlor cars, where the low average would be 9, in round figures; take line 12, that would be 1937 through 1940, averaging 9 passengers to the Pullman car, and in 1941, it [fol. 2583] jumps up to 11, and in 1942 to 18.

Now, that is the final page of the exhibit. That includes Pullman cars deadheaded. That completes my testimony except I wish to say this, that my testimony is directed to showing the facts and extent of loss in revenue or unrealized revenue by reason of the Kentucky fares not being in step with the interstate fares, and that that loss is in

face of a chronic need for additional revenue by the railroads where a fare period is taken for comparison.

The balance of the exhibit is for the sake of rounding out the relation between freight and passenger service, showing that passenger carrying cars are more responsible for passenger deficits and baggage, mail, express and milk cars, and that passenger operating and income ratios shows a definite burden of passenger upon freight traffic.

Mr. Oliver: You may cross examine.

Examiner Stiles: This page 31, sleeping and parlor cars, that does not include the dining cars?

The Witness: No, sir.

Mr. Oliver: You may cross examine. That's all for this witness on direct. I would like to offer Exhibit 6 which has been identified by the witness Tassin.

Examiner Stiles: Exhibit No. 6 is received in evidence.

(Exhibit 6, Witness Tassin, received in evidence.)

Examiner Stiles: You may cross examine.

[fol. 2584] Cross-examination.

By Mr. Marks:

Q. Mr. Tassin, please refer to page 3 of your exhibit. As I understand, you have estimated that you would have received $526,200 revenue in 1943, if you had had the fares that you are seeking in lieu of those that you now have?

A. That is on the basis of a year ended with June 30, 1943.

Q. Now, if you had received that much additional revenue, would it have found its way into your net income account?

A. Not all of it; lots of it sticks by the way.

Q. How much of it do you think would find its way into the net income account?

A. Offhand, probably 20 per cent.

Q. In other words, in order for the railroads to get $1, it is necessary for them to charge travelers in Kentucky $5 under present conditions?

A. Well, I can't answer that question that way. The railroads are entitled to and should prescribe reasonable fares. Now, what becomes of the money received from reasonable fares is another question.

Examiner Stiles: I don't understand your answer—that only 20 per cent probably of this half million dollars shown on page 3 would show up as net revenue.

The Witness: Because this would all come in the very heavy brackets of taxable income——

Mr. Oliver: You didn't say net revenue. He said net income.

[fol. 2585] The Witness: Oh, as your net income.

Mr. Oliver: You said net revenue, didn't you, Mr. Examiner?

Examiner Stiles: Yes, sir, and that was the point.

The Witness: We would receive 100 per cent of the gross.

By Mr. Marks:

Q. It would find its way into the net railway operating income?

A. Yes, sir.

Q. But only 20 per cent of it——

A. I am using that figure offhand; it will vary for varying roads.

Q. Who would get most of that 80 per cent?

A. The United States Government; it would go towards winning the war. Somebody has got to raise the money to fight this war.

Q. Does the U. S. Government designate the railroad as a tax collecting agency?

A. Not only the United States Government, but the 48 states as well use the railroads as a good medium for collecting taxes.

Q. How about Kentucky?

A. Kentucky included.

Q. Have the Kentucky taxes increased materially in the last few years?

A. I haven't got the comparative figures in front of me for the state of Kentucky separated; they are available, of [fol. 2586] course.

By Mr. Holifield:

Q. Don't you know that as the Federal revenue increases that the Kentucky revenue decreases?

A. I don't doubt that. I think the state would like a better division of the burden of taxation as a whole.

Q. In that you are allowed to take out Federal revenue before you pay any taxes to Kentucky?

A. We are allowed to take out State taxes before we pay any taxes to the Government, but that whole question of taxes, as I see it, the question, as I see it, is a question of revenue from reasonable tariff, but what becomes of that revenue is apart from this proceeding.

Q. We are talking about deadheaded passenger cars?

A. Yes, sir.

Q. Is most of that deaded passenger car business for the accommodation of the military at the present time?

A. At the present time, yes, but even in normal times we have a certain amount of deadheading in connection with the American custom of conventions and baseball games and football games, and when one university is to play with another, we have to furnish a certain amount of equipment to take care of the crowd, so there is a certain amount of deadheading at all times of passenger equipment, but that is increased in war time.

Q. That is generally interstate?

[fol. 2587] A. In some cases, it is intrastate. I am from Louisiana, and, for instance, when New Orleans plays Baton Rouge, that is an intrastate proposition.

Q. But there is very little of that in Kentucky though?

A. Well, I don't know about that.

By Mr. Marks:

Q. On page 4 of your exhibit, I believe that exhibit shows that taking the respondents as a whole, they are paying their way in 1942 on their passenger traffic?

A. Apparently, but they are depleting their properties by intensive use, and how much money they will have to spend to rehabilitate their properties after this spree, I can't say. This prosperity is in a measure purely false prosperity.

Q. Have you any figures showing the trend for 1943 similar to those shown on page 4?

A. The only 1943 figures I have in here, as I recall it, back on page 25, the first four months in 1943 are included there, and also on page 29, and only on those two pages, but that is enough to enable me to admit, which I would on the basis of my general knowledge anyway, that 1943 is showing an increase over 1942 up to the present time.

Q. In other words, it would show up better for the railroads?

A. Yes, sir.

Q. Now, on page 5, I believe we reached the conclusion that that is your book value figure under the heading of investment in railway property used in transportation service?

[fol. 2588] A. Yes, sir, as reported to the Interstate Commerce Commission.

Q. I notice that you have a reference mark, a small letter "a" showing allowance for working capital. Could you give us an explanation of how you arrived at that allowance and approximate relationship to the total investment?

A. The allowance is the amount of cash and material and supplies on hand which is a reported figure to the Interstate Commerce Commission in the balance sheet account at the close of each year. That is included along with the figures reported in schedule 211-N.

Q. Just for my own information, I was just wondering if you could point out in your annual report the lines on which those figures appeared that you used for the CNO&TP for the year 1942?

A. It is schedule 211-N, and it is on page 207, and it shows——

Examiner Stiles: Is that the same form that the Interstate Commerce Commission uses that you are referring to right now?

The Witness: Yes, sir, the ICC is also reported to the State and the State statistics are in the back.

Examiner Stiles: It is the same page you are referring to, it will appear in the ICC report.

The Witness: It is the same schedule reference and I think that it would be the same page, Mr. Examiner, but I am not sure about that.

The figure appearing on line No. 49 on page 207, columns [fol. 2589] (c) and (e) $182,891,450, plus the account 708 (cash) appearing in line 32 in column (c) $5,200,176, and in that same column on line 30, materials and supplies, $1,211,813.

By Mr. Marks:

Q. That cash and materials is shown on page 200?

A. They are added to that.

Q. In addition to that?
A. Yes, sir.

Examiner Stiles: What does "that" refer to? It will mean nothing on the record unless you state what it is.

The Witness: Investment in real property used in transportation service recorded in Schedule 211-N.

By Mr. Marks:

Q. How do you account for your $83,000,000 investment in railway property, etc., shown on 207, compared with $59,000,000 shown as the book value?

A. The figure of $58,979,920 appearing in column (c) of line 11 is brought forward to line 3 in Schedule 211-N, and is the property owned by the CNO&TP Railway from which is subtracted the property not used by the CNO&TP Railway, but leased to someone else to operate and to which is added the property of the Cincinnati Southern, that is leased by the CNO&TP Railway.

Q. What is that Cincinnati Southern Railway?

A. That is the line of road from Cincinnati to Chattanooga owned by the City of Cincinnati, and leased to the [fol. 2590] Cincinnati, New Orleans and Texas Pacific Railway.

Q. But isn't that the whole CNO&TP Railway?

A. It is the line of road, but the CNO&TP owns, in its own rights, the equipment, and owns certain shops and other properties in its own rights.

Mr. Oliver: Now, you were reading from figures from the annual report for the year 1942 to the State of Kentucky?

The Witness: Yes, sir, and the figures were system figures and not Kentucky figures.

By Mr. Marks:

Q. Now, I believe the figures on page 6 shown as investment in railway property are likewise the so-called book value rather than reproduction value?

A. Let's not say book value; let's say book investment or book cost.

Q. Is that the book investment on page 6?

A. Yes, sir, that is the book investment on page 6; not only in owned property, but likewise in leased property.

Q. Property used in transportation?

A. Property used in transportation service irrespective of the year.

Q. And I believe we agreed that either through Mr. Miller or through you that we would break this down into yearly periods?

A. I have permission to break that down and with due respect to Mr. Miller, I will break them down.

[fol. 2591] Mr. Miller: That is all right.

The Witness: Not that I distrust his figures in any way, but I have that information in my office.

By Mr. Marks:

Q. And that will break down the cash and materials and supplies?

A. I can show those figures separately if you desire them shown separately. I might say for the record that these figures are used by the Bureau of Railway Economics in all of these published statistics and that we are all more or less familiar with this base of measuring operating results of the railroads. All of those statistics provide figures to show the return by the railroads.

Q. You would show your rate of return for each year for the Respondent roads, as I understand it?

A. I will be glad to do that.

Q. Will you super-impose upon that your corresponding figures for the first half of the year 1943?

A. We can't give them to you for a half a year. These figures are not completed as soon as the year has closed; as a matter of fact, the 1943 figures will not be available until about June, 1944.

Q. How do you arrive at the rate of return, then?

A. We use the investment at the beginning of the year for that purpose.

Q. That is in connection with your monthly statement?

[fol. 2592] A. Yes, sir, they use the figure at the beginning of the year because they can't revise it until the changes during the year are available.

Examiner Stiles: You have asked him to furnish and he said he was going to furnish an additional item to that which was covered by permission previously granted—is that true?

The Witness: He asked me to make a certain separation of the details of the figures that I am going to furnish. He asked me to show it in greater detail.

By Mr. Marks:

Q. Let's take page 6.

A. All right, take page 6; that is an average figure, and he wants me to give him that figure for each individual year and at the same time take out of that the amount of cash and materials and supplies included in that.

Q. Putting all three in one heading?

A. Yes, sir.

Mr. Oliver: And he wants the showing of the rate of return.

The Witness: Yes, sir, which will necessitate my putting in the net railway operating income and carrying it to show the rate of return as indicated on that basis.

Examiner Stiles: Permission is granted to show the statement in that form.

By Mr. Marks:

Q. On page 5, you show taxes being deducted before arriving at your net railway operating income. Do those [fol. 2593] taxes include your Federal income taxes?

A. They do.

Q. Now, I notice an increase in taxes in 1942 over 1941 for the Southern Region carriers of approximately $118,000,000. In other words, your tax item has increased approximately 150 per cent. Would you say that by far the largest part of that increase is Federal income taxes?

A. What page are you looking at?

Q. Page 5.

A. Page 5?

Q. Yes, sir.

Mr. Oliver: 1942, as against 1941?

The Witness: Oh, I see. This column of taxes that appears on here. Are you looking at 1942 as compared with 1941?

Mr. Marks: Yes.

The Witness: Yes, sir.

By Mr. Marks:

Q. But notwithstanding, you were able to take care of all of your increased Federal income taxes, '42 over '41, and you nevertheless increase your rate of return from 4.24 to 6.41?

A. Yes, sir. As I——

Q. Have you given any consideration to what your rate of return would have been if you had not deducted your Federal income taxes before computing it?

A. No, because that would be improper. Now, in com- [fol. 2594] parison with that figure of 6.41 to which you called my attention, please look on line 20, 0.78 in year 1932. We can't consider 1942 without also remembering 1932.

Q. But you are proposing increases in your fares when they will do you the least good?

A. Now, we are straightening out a situation that needs straightening out when conditions permit us to do it.

Q. Please refer to page 13. I understood you to say that one of your purposes in proposing the increase would be to improve the relationship of the income from your passenger cars in your train compared to your so-called head end cars?

A. No, I didn't say that that was one of the purposes. That is not a purpose, but it is an indirect benefit. I am avoiding that word.

Q. It is a desirable thing to accomplish?

A. Yes, put it that way.

Q. In 1942, your head end cars were producing 28½ cents per car mile, whereas your passenger cars were producing 38½ cents per car mile?

A. That is right.

Q. If you increased the income from your passenger cars, wouldn't you throw this further out of line than they are today?

A. Not in a proper period basis. Again, we can't consider individual years in and of themselves, but must have [fol. 2595] good and bad alike, the fat and the lean.

Examiner Stiles: In other words, the figures in the average column are of greater significance than the figure in the 1942 column?

The Witness: It is, it is.

By Mr. Marks:

Q. Well, couldn't you have changed your average by going back even farther than you did?

A. I would have had I had the information as to the separation as between passenger and freight, had that permitted me to do it. I already cover the entire period between wars 1921 to 1940, inclusive, and if that does not give us a fair average picture, I do not know what will.

Examiner Stiles: Are these the same years on pages 12 and 13 that you used in the Alabama case?

The Witness: They are.

Mr. Marks: I think that is all.

Examiner Stiles: Any further questions?

Mr. Holifield: No questions.

Mr. Miller: I have some questions, if you please.

By Mr. Miller:

Q. Could you explain briefly how you obtain the figures on page 3 with respect to those lines for which you are responsible?

A. Yes. From month to month, we accrue the separation of between intrastate and the state allocation of interstate revenue for the various states. That is done from month [fol. 2596] to month, regardless of any case, and was available before this action was brought. Now, because all of the intrastate was not subject to the increases here at issue, for example, the Federal travel, we made a test of the relation of the intrastate revenue that should be excluded and arrived at the amount that would be subject to the increase if the intrastate fares were put on the same basis as the interstate.

Q. Then I understand that you regularly do something on the order of counting tickets, or something of that sort, is that correct?

A. We did before 1936,—we counted every ticket and checked every cash fare, and then it suddenly dawned on us that we were losing more money on counting how much money we lost, and then we stopped that method and shortened the procedure.

Q. How has it been shortened?

A. They cut off quite a few clerks.

Q. What is the procedure?

A. The procedure is to take a representative period and show what the relation is between infrastate and interstate.

Q. In other words, it is what the statisticians call a sampling procedure?

A. A sampling procedure is kept current by making such changes as are found necessary.

Q. Do you, by any chance, know why the L&N Railroad figure is so much larger than the others?

[fol. 2597] A. It is because they do so much more business in Kentucky than the rest of us do.

Examiner Stiles: You would properly call this an estimated loss?

The Witness: Yes, sir—it is an approximated loss; it is more carefully made than an estimate usually is; it is the best approximation we can arrive at by competent statistical methods.

By Mr. Miller:

Q. On page 4 of your exhibit, you set forth net railway operating income, or deficit, passenger,—that is the passenger income or deficit?

A. Yes.

Q. Is there any revenue from freight included in there at all?

A. No, sir.

Q. In making any of these calculations in this exhibit, have you given any consideration to the recognition by the Interstate Commerce Commission that freight revenue should, to a certain extent, force these passenger deficits?

A. I have testified that they don't.

Q. You have not included them?

A. No, these figures are bodily taken from the reports of these various carriers on file with the Interstate Commerce Commission. They can be checked with the reports on file at the Interstate Commerce Commission.

[fol. 2598] Q. Now, turn to page 5. In answer to a question from Mr. Marks, you stated that it would be improper to figure rate of return prior to deduction of Federal income tax from your railway operating income. Just before I ask you the question, I would like to refer to a statement in the first report of the Interstate Commerce Commission in Ex Parte 148, in which they quoted from a prior decision wherein they said,

"Railway corporations should, like other corporations, pay their Federal income taxes out of income, rather than collect it, in effect, from the public, in the form of transportation charges adjusted to enable them to retain the designated fair return over and above the taxes."

In the light of that statement of the Commission, why did you say that it is improper to do that?

A. The Commission made that statement?

Q. Yes, sir, and I could give you the page if you want it.

Examiner Stiles: Didn't they there say that the 5¾ per cent with tax deducted was equivalent to 6 per cent with the tax in?

The Witness: If the recognized rate of return was high enough, I would have no objection to it, and that is the way I intended to answer your question.

Examiner Stiles: I think the 5¾ per cent is based on the Federal income taxes being out.

The Witness: It is the prescribed method.

[fol. 2599] By Mr. Miller:

Q. Now, Mr. Tassin, I am not familiar with these new report forms, and never had a great deal to do with it. Do I understand that account 211-N?

A. That is a schedule.

Q. It includes cash and materials and supplies?

A. It does not.

Q. That is just to clear up myself. The Federal income taxes are not distinguishable from the other taxes on page 5 of your exhibit or elsewhere in your exhibit?

A. No, but they are distinguishable in the reports of the Interstate Commerce Commission.

Examiner Stiles: So it is impossible to determine from your exhibit what your rate of return would be prior to payment of Federal income taxes?

The Witness: No. If we are going to exclude Federal income taxes, why not also exclude State taxes? You have a lot of vexatious questions to answer if you attempt to break those figures down for purely theoretical reasons.

Examiner Stiles: Your rate of return or the rate that you claim that you should get is not a purely theoretical matter?

The Witness: No, and it is not sufficient to justify making these separations, and they are not making enough money over a representative period——

Examiner Stiles: It is just a question of determining what you actually had made.

[fol. 2600] The Witness: Those computations could be made by separating the amount of income taxes included in that column, and then computing the return by excluding them and including them—you have a comparison both ways.

Examiner Stiles: And the rate of return would be materially higher especially in the last two years?

The Witness: In proportion to the increase in income taxes?

Examiner Stiles: Proceed, Mr. Miller.

By Mr. Miller:

Q. On page 7, I think there is a small matter that should be cleared up for this record. You have listed the mileages of the seven lines operating in Kentucky. Now, there are other railroads that are not parties to the petition in this case, as for example, the Baltimore & Ohio. My understanding is that the other railroad lines, that is, those other than these seven operate a very small number of miles in the state of Kentucky,—namely, less than about seven miles.

Mr. Oliver: You have used the term petitioners—these are the seven petitioners. If you will qualify it to read the respondents, I think you will get it correctly. The B&O is a respondent, but not a petitioner.

By Mr. Miller:

Q. The other respondents operate a very small number of miles of railroad in Kentucky?

A. Yes, sir.

[fol. 2601] Q. The most that any of the others operate is about seven miles, isn't it?

A. I think so; the Pennsylvania operates a very short mileage.

Q. And so does the B&O?

A. Yes.

Q. And there are only five lines in the state of Kentucky that operate more than 100 miles?

A. I wouldn't say that if you include classes 2 and 3; I don't know the mileage of some of these class 2 and 3 roads.

Q. It is the class 1 railroads?

A. It is the class 1 railroads.

Q. Now, on page 9 of your exhibit, you give a reproduction estimate—I believe that is to show the conservativeness of your basis for calculating rate of return, is that correct?

A. That is right.

Q. You have recognized in that reproduction estimate the increase in values which are occurring—I mean the increase in costs that are occurring that would result in a higher reproduction cost than the original cost?

A. These figures are the 1940 figures and are the Commission's estimate of the amount of investment that would be prudently required, or that would have been prudently required to produce these carriers in 1940,—the amount of money that would have had to have been raised.

Q. Could you refer to the report or the document where [fol. 2602] the Commission made this estimate?

A. The source is shown in line 16 of page 9 of my Exhibit No. 6; it is taken from Exhibit A-11 introduced in Ex Parte 148.

Q. That would be a statement of the Commission?

A. Of the Bureau of Valuation of the Interstate Commerce Commission.

Q. But that was the Bureau of Valuation's estimate?

A. Yes, sir.

Q. Didn't they as of the same date set forth their own estimate of what should be the value upon which fair returns should be calculated?

A. It didn't get into the record. Commissioner Aitchison excluded any reference to the statement to which you refer.

Q. Turn to page 14. The revenue per passenger mile in coaches during 1942 was at that time approximately the present Kentucky intrastate rates?

A. Yes, sir, very little influenced by the 2.2 rate that several roads had.

Q. Now, then, on page 10, you show an operating ratio for those same lines for the same year of 74 per cent for 1942. If that rate would return that ratio, why is it not a reasonable rate?

A. The rate returns the ratio because of the number of people who paid the fare. It doesn't mean that the fare [fol. 2603] was just, whether one pays it or ten.

Q. In other words, you believe the fairness of the rate has no relationship to the economic conditions which give rise to differences in travel, is that right?

A. Our tariffs are not equipped with thermostats to make them rise and fall from month to month in accordance with the rise and fall of the volume of traffic. They must be based on a proper period consideration.

Q. On page 30 of your exhibit, why didn't you include any of 1943 in those calculations?

A. On page 30?

Q. Yes.

A. Well, I worked on a full year basis, that is the only reason. I had admitted frankly and freely that 1943 shows an increase in volume over 1942.

Q. But in some of the other exhibits you include the first three months of 1943?

A. That is true, and it could have been done in the cases with more work, but those figures during that current year are not always readily available, especially when you are dealing with several roads they are not so easily obtainable. We prefer to work on a full year to the extent that we can.

Mr. Miller: That's all the questions that I have.

Mr. Johnson: May I ask a question of him?

Examiner Stiles: Yes, sir.

[fol. 2604] Mr. Johnson: You are familiar with the fact that in 1933 to November 15, 1937, there was a 1½ cent fare for intrastate passenger rates in Kentucky?

Mr. Oliver: Mr. Examiner, I would like to inquire whom this gentleman is representing? I didn't get his oral appearance this morning.

Mr. Johnson: I represent myself, and other car riders in Kentucky who have asked me to appear here.

Examiner Stiles: If you have not been admitted to practice before the Commission, you would not be authorized to represent other persons here but as I understood from your written appearance, you represent yourself as a car rider, and as such, you may question the witness.

Mr. Johnson: Read the question, please.

(Question read.)

The Witness: I don't carry those dates in my own mind; Mr. Aiken testified to the situation here this morning, and I heard his testimony.

By Mr. Johnson:

Q. It was a fact, was it not, then that for practically five years ending November 15, 1937, there was a 1½ cent passenger rate in force in Kentucky?

A. If Mr. Aiken said so, it is a fact.

Q. And then for another 14 months following November 15, 1937, the carriers asked for an increase in that rate to 2 cents and it was granted, and for 14 months then they had [fol. 2605] a 2 cent rate?

A. I assume that those periods are correct as you are stating them; I am familiar with the rates and fares.

Q. And after that rate had been in operation for fourteen months, dating from January 15, 1939, to the present date, there is a basic rate of 1.5 cents, which was increased 10 per cent at one time, which made it 1.65?

A. It was 1.65.

Q. And that period was approximately five years?

A. I don't carry those periods in my mind.

Q. Assuming that to be a fact, and I think that the record shows that, there were practically five years of operation at the low rate and then fourteen months, or practically the year 1938 at the higher rate of 2 cents, and then the road went back to the lower rate for another five years. Now, assuming those to be the facts for the purpose of this question—if you will turn to page 5 of your exhibit, isn't it a fact that your total operating revenues in 1938 when the change was made to the higher rate decreased?

A. Well, that decrease could be due to a great many causes.

Q. I appreciate that, but I am just asking you if it is not a fact, however, that they did decrease for the year 1938?

A. There was a decrease in the year 1938, compared to 1937, yes.

Q. And, therefore, that 1938, the year with the higher rate [fol. 2606] in effect, stands out as a drop in total operating revenues as compared with the previous five years and the subsequent five years?

A. The connection between the two is not apparent to me.

Q. Isn't it also a fact that the operating expenses decreased that year, in 1938, too?

A. Yes, there was likewise a decrease in operating expenses.

Q. And that the rate of return for that year was a deficit, 1938 showed a deficit?

A. No, that "D" applies to net income; there was a deficit in the net income column, but a return of 1.9 per cent.

Q. And the net income decreased that year?

A. Yes, sir.

Q. Then please turn to page 7?

A. All right.

Q. The rate of return in Kentucky has been higher than over the entire lines, isn't that right?

A. The weighted return for Kentucky is higher than the weighted return for the seven roads as a whole.

Q. Now, then, to page 24 and 25, Mr. Tassin,—did not those two pages show that for the five years prior to 1938, the trend was upward and then it decreased in 1938, and then when the *increased* rates went into effect again in the beginning of 1939 and continued for another five years that the trend was upward again?

[fol. 2607] A. The statement shows an upward trend after 1938; 1938 was a depressed year.

Q. It was a dip?

A. Yes, sir.

Q. It dipped down into 1938 from the five preceding years, as well as the five succeeding years?

A. No, 1938 is more than 1935 or 1934; you said something about the five preceding years; 1938 is higher than any year except '36 and '37.

Q. For the preceding two years, then, it certainly was dipped?

A. Yes, sir.

Q. And then for the succeeding five years it represents a dip from those two?

A. Only the two succeeding years are better and not five.

Q. On the following page, don't you show the same thing for '41 and '42?

A. If you include '41 and '42, yes, but that would make it four years and not five.

Q. Now, turn to page 30. Doesn't your exhibit on page 30 show that the passenger miles per car mile for 1938 when the rates were increased were lower than they were in the two preceding years of '36 and '37?

A. It is lower than the preceding year, '37; this page 30 deals with coach miles only.

Q. Yes, I appreciate that,' The 1938 then was lower than [fol. 2608] it was for 1936 and 1937?

A. Lower than for 1937, but we haven't got that figure for 1936.

Q. Doesn't the figure show 10.9 for 1936,—page 28?

A. But page 28 is per car-mile, all passenger carrying car miles and not coach miles; coach miles statistics were not available for 1936 and that is why they were not shown on this statement.

Q. That includes all of the cars?

A. Yes, sir.

Q. Then, for all the cars, it shows there was a dip in 1938 as compared with 1936 and 1937?

A. You will have to turn back to page 28.

Q. Why?

A. Because the coach is only one kind of a car in several kinds of passenger cars.

Q. I am now trying to direct your attention to page 30, passenger mile per coach mile. It is a fact that 1938 represents quite a dip from the figures for 1937?

A. We lost three passengers a car.

Q. You lost three passengers?

A. Yes, sir.

Q. And when the rates were decreased again beginning in 1939 to the present time, the passenger miles per coach mile increased to the point——

[fol. 2609] Yes, sir.

Q. —to the point where in 1942 they increased from 12.33 per coach to 30.85?

A. Yes, sir, or from 12 to 31, or increased by 19 passengers.

Q. And all of these differences which we have just discussed apply to that one year 1938 as compared with the preceding period and the succeeding period when lower rates were in effect than in 1938?

A. Yes, sir, but there is not a relation there between cause and effect.

Q. That, of course, is your opinion?

A. It is my knowledge; I know the consist of these statistics.

Q. Would you undertake to say that the railroads were wrong in their reasoning when in 1938 they asked the Interstate Commerce Commission to permit them to increase the rates, and then in 1939 when they found a falling off of revenue they asked the Interstate Commerce Commission to approve the decreasing of the rates again in order to recapture some of the business that they had previously lost?

Mr. Oliver: Let's keep the record straight. There was no request on the part of the railroad to the Interstate Commerce Commission in 1938 to increase their rate to 2 cents a mile. In 1936, the Interstate Commerce Commission reduced the rate from 3.6 to 2 cents a mile, and fixed that as the maximum rate. Later on, the railroads, without any [fol. 2610] further authority from the Interstate Commerce Commission increased their rates to 2 cents a mile, which the Commission had found to be a reasonable rate. Now, the phrasing of the question just leaves a confusion in the record here that I think should not be permitted by that sort of a question.

By Mr. Johnson:

Q. What, if you know, occasioned the railroads changing the rate from a low to a higher rate after 1938?

A. A traffic man should answer that question.

Q. You would not undertake to say?

A. I wouldn't undertake to say.

Q. And you don't know what occasioned them after operating for that one year on the higher rate to want to be permitted to put into effect the lower rate?

A. In general, I know; I would say that in general the railroads very closely watch all of the situations and they are always after additional revenue whether that is to be secured by raising or lowering the rates, but a traffic man will have to answer the question in detail for you.

Q. Would you say that the fixing of rates is in any way determined by a desire to increase or lower traffic?

A. We live off of volume of traffic, and we must have fares that produce volume.

Q. State whether or not you know that the railroads undertook the statement which the railroads made at that time in justification for reducing the rates was that they [fol. 2611] wanted to recapture some of their lost business that was otherwise travelling in private cars and in busses.

A. In other words, they wanted to protect their volume.

Q. And they, at that time, reduced the rate?

A. Yes, sir, it had that effect.

Q. They did it, didn't they?

A. The passenger traffic witness I think covered that situation; I think those witnesses covered it.

Q. I am not so sure that they did.

A. A statistician operates on a post mortem basis, you see.

Q. You merely look at it after it happens?

A. We see what has happened, and then we draw our lessons from experience.

Q. Would you be able to say from these figures that I have called your attention to that by having increased the rates, that the reduction in their revenue was occasioned by that increase in their rates?

A. What I say is this—what the railroads are after is consistently to protect or increase their revenue and they raise and lower their rates as in either case it may produce their results.

Mr. Johnson: That is all.

Examiner Stiles: Mr. Johnson, did I correctly understand you to say that you have not been admitted to prac-
[fol. 2612] tice before the Commission?

Mr. Johnson: I have not been, no, sir.

Examiner Stiles: Then I will ask you to eliminate from your written appearance your appearance for other riders.

Mr. Johnson: I shall be delighted to do so.

Examiner Stiles: Are there any further questions to this witness on cross examination?

By Mr. Marks:

Q. Did you hear certain witnesses testify this morning with respect to extraordinary operating expenses during the war period?

A. Yes, sir.

Q. Would all of those expenses be included in your railway operating expenses?

A. Yes, sir.

Mr. Marks: That is all.

Examiner Stiles: Any redirect examination?

Mr. Gray: I have a question that I would like to ask the witness at this time.

Redirect examination.

By Mr. Gray:

Q. Would you refer to page 28 of your exhibit?

A. Yes, sir.

Q. The record will show from the testimony this morning that the Illinois Central has had the same rate since 1936 through and they did not increase or decrease their rate in 1938. Don't the figures shown on page 28 of your exhibit show a dip in the Illinois Central figures for the year 1938 [fol. 2613] as Mr. Johnson referred to it as a dip?

A. Yes, sir, there is a dip in comparison with 1937, and also the figure is lower than the years 1939 and 1940 on page 28 to which he referred, and in 1941 and 1942 on page 29 to which he also referred.

Q. Is the same thing true on page 30 of your exhibit?

A. 1938 is less than 1937 and less than 1939, 1940 and 1941, or 1942.

Q. Would that indicate to you as a statistician that the causes of the dip were something other than a rate increase or decrease?

A. Yes, sir, and I so answered Mr. Johnson that he was assuming the relation of cause and effect which did not exist.

Mr. Gray: That's all. Thank you.

Mr. Oliver: I have nothing further.

Examiner Stiles: You are excused.

(Witness excused.)

Mr. Oliver: That completes the case for the Respondents unless the parties on the other side wish to question the accounting witnesses for the other railroads with respect to the showing made for their respective roads on page 3 of the Exhibit 6 introduced by Mr. Tassin.

Examiner Stiles: Does anyone wish to have those accounting witnesses called to the stand?

[fol. 2614] Mr. Marks: We have no questions to ask the accounting witnesses. Mr. Miller may.

Mr. Miller: No, I don't have any.

Mr. Gray: Do you have any such questions, Mr. Johnson?

Mr. Johnson: No, sir.

Examiner Stiles: Off the record.

(Discussion outside the record.)

Examiner Stiles: On the record.

Mr. Marks: I would like to request, Mr. Examiner, that the protestants be permitted to wait until tomorrow to start their testimony at 9:30, providing the C&O Railroad is on time for Washington.

Examiner Stiles: We will adjourn at this time until 9:30 tomorrow morning.

(Whereupon, at 4:16 o'clock p. m., on Wednesday, September 8, 1943, the hearing was recessed until 9:30 a. m. of the following day, Thursday, September 9, 1943.)

[fol. 2615] Hearing Room, Kentucky Railroad Commission, Frankfort, Kentucky, Thursday, September 9, 1943.

Before C. E. Stiles, Examiner.

Appearances: As heretofore noted.

PROCEEDINGS

Examiner Stiles: Let's come to order.

Mr. Oliver: I would like to recall Mr. Tassin for about five minutes.

J. S. TASSIN, having previously been sworn, was recalled and testified further as follows:

Direct Examination.

Mr. Oliver: Mr. Examiner, Mr. Tassin thought there might be some little confusion in connection with his discussion of pages 6 and 9 of his Exhibit No. 6, and I would like to give him an opportunity to make a few remarks about those two pages of his exhibit.

By Mr. Oliver:

Q. Will you proceed, Mr. Tassin?

A. I requested on yesterday permission to recheck pages 6 and 9 for fear that there might have been some typographical clerical error in the totals appearing on line 16 of page 6, and line 14 of page 9. There is no such clerical [fol. 2616] error. The figures on page 6 or the averages for the years 1921 to 1942 are inclusive, and the figures in the first column under the heading "Investment in railway property used in transportation service, including cash

and materials and supplies" are average figures over the period built up in the way I described to Mr. Marks from the CNO&TP annual report to the state of Kentucky for the year 1942; that is, there are also in the figures reported in Schedule 211-N, plus cash and materials and supplies. I haven't agreed to furnish the detail that supports these averages.

The figures on page 9 are from an entirely different source, being entirely taken from Exhibit 11-A, in Ex Parte 148, and Bureau of Valuation figures. The first column entitled "Basis A production costs" is described in Exhibit A-11, as original cost to date, and it does not include land, and also does not include working capital, which are here shown on a current appraisal basis in separate columns on page 9.

This "Basis A production cost", or original costs to date is composed of three different kinds of figures. Take the Southern Railway, for example, on line 13,—49 per cent of that total represents what we call continuous structures, like various structures like bridges and trestle structures that are renewed and replaced on a piecemeal basis and not accounted for on a basis of retirement and replacement. [fol. 2617] That block of property is in this column on the basis of the 1910-14 level of prices, 49 per cent of it. A second block is partially in on that basis—the amount accounted for as betterment being on the current costs basis; and the third block is on the retirement renewal basis, and represents the actual cost of property installed subsequent to the valuation date or in place of property 100 per cent retired after that date. So, there are three kinds of figures in that column.

In Column "B", there are two kinds of figures; while Exhibit A-11 describes those figures as cost of reproduction new, a substantial proportion is cost of reproduction second-hand.

Now, take Basis A and Basis B as taken here from Exhibit A-11, to both of those figures are added lands and working capital to produce Basis A and Basis B in the extreme right of the exhibit.

I merely wished to get that clear so that we might have a clear understanding of the natures of these figures compared one with the other, and I will furnish the details supporting the averages on page 6.

Examiner Stiles: Any questions?

Mr. Oliver: Nothing further.
Mr. Holifield: No sir.

Cross-examination.

By Mr. Marks:

Q. When you say cost of reproduction second-hand, is it [fol. 2618] not meant by that that it is equivalent to the reproduction new less depreciation?

A. It might be.

Q. On page 9, is that the amount that the Commission approved as being a proper basis for working capital rather than the actual amount of cash and materials and supplies on hand as shown on page 6?

A. It is an amount worked out according to a formula devised in the Bureau of Valuation and is less than either cash or materials and supplies, although it is presumed to cover both or be a fair allowance for both.

Examiner Stiles: You are excused.

(Witness excused.)

J. E. Marks was sworn and testified as follows:

Direct examination.

By Mr. Holifield:

Q. State you name, age and residence?

A. My name is J. E. Marks, 52 years of age; my address is Lexington, Kentucky.

Q. State briefly your experience in traffic and transportation matters, Mr. Marks?

A. I have had approximately 30 years experience in handling traffic and transportation matters in the employ of railroads and shipper organizations.

Q. Have you had any experience in accountancy?

[fol. 2619] A. I am not an accountant by profession, but I have had some experience along that line, for example, upon leaving school in 1907, I accepted employment in a distillery over in Nelson County, and during the seven years that I was there, my duties consisted of being a shipping clerk and bookkeeper for the distillery, and I performed

most of the duties of a local freight agent for the Louisville & Nashville Railroad Company at that point, including making up accounts currents.

In 1918, I left the employment of the Illinois Central Railroad after three and a half years in the general freight office at Memphis, and accepted employment with the United States Diplomatic Service for the duration of World War No. 1. After being in the State Department at Washington for three years, I was assigned to the Embassy at London and shortly after arriving there, I became assistant accountant in the London Embassy.

After a year or more in this position, I was transferred to the Embassy at Rome as chief accountant and disbursing officer. I held that position for 2½ years. While in Rome, I was sent to Bucharest, Rumania, to audit and revise the accounts of the Legation. I left Rome in November, 1922, five days after Mussolini came into power, and I have been in Lexington, Kentucky, since.

Q. Are you familiar with the issues in this hearing?

A. I think so.

[fol. 2620] Examiner Stiles: You might state for the record your present connection with the Kentucky Railroad Commission.

The Witness: At the present time, I am an attorney at law engaged in private practice, but among other of my clients I am serving as Commerce Counsel and Traffic Adviser for the Kentucky Railroad Commission.

By Mr. Holifield:

Q. For whom are you appearing in this proceeding?

A. For the Kentucky Railroad Commission.

Q. Have you prepared some exhibits which you desire to offer in support of your testimony?

A. I have.

Q. Were those exhibits prepared by you or under your supervision?

A. They were.

Q. Are they correct to the best of your knowledge and belief?

A. They are.

Q. Please proceed with your testimony, identifying and explaining your exhibits.

Examiner Stiles: Let the first exhibit be identified as No. 7.

(Exhibit 7, Witness Marks, marked for identification.)

The Witness: My first exhibit, No. 7, shows typical illustrations of the present and proposed rail coach fares, one way and round-trip, between points in Kentucky as com-
[fol. 2621] pared with corresponding fares maintained by the Southeastern Greyhound Lines.

For the most part, the one-way and round-trip bus fares for the shorter hauls are the same as the rail fares, being based on 1.65 cents per mile for the one way, and 10 per cent less than that for the round-trip fare. The bus fares decrease somewhat with distance, so it will be found for the somewhat longer hauls, I would say over 100 miles, the bus fares are a little lower than the rail fares. There is some little difference in fares between certain points like Louisville to Elizabethtown, the bus fare being a little higher than the rail, due to the fact that the highway distance is somewhat greater than the railway distance. Also, the reverse is true in other cases, for instance, Lexington to Richmond, the bus fare is 45 cents against a rail fare of 66 cents, due to the shortest distance by highway. I believe these points are representative in Kentucky, and that may be summed up by saying that at the present time the one-way rail fares average about 15 per cent higher than the one-way bus fares, whereas the proposed one-way rail fares average approximately 40 per cent higher. On round-trips the percentages vary slightly, the rail being about 9 per cent higher, and the proposed fares approximately 41 per cent higher.

I think that is all the information necesary for that exhibit.

[fol. 2622] Examiner Stiles: Let the next one be identified as Exhibt No. 8.

(Exhibit 8, Witness Marks, marked for identification.)

The Witness: Stated briefly, Exhibit No. 8 was compiled from reports to the Kentucky Railroad Commission by various carriers in Kentucky, and relates almost entirely to passenger statistics. The various tables are indicated on Sheet 2.

On Sheet 3, I have shown that the Louisville & Nashville Railroad Company, Illinois Central Railroad, the C&O, CNO&TP and Southern Railway have a total mileage in Kentucky of 3,140 miles or something over 96 per cent based on passenger mileage. In other words, there are some sections of these roads over which no passenger service is maintained. On total mileage, however, the per cent is about 96.6 per cent of the seven lines shown on the exhibit.

Examiner Stiles: I note your footnote on that page and I am wondering if your figures above reflect those reductions in mileage.

The Witness: These figures are those of the average of 1942, and I merely mentioned that to show that the mileage is somewhat less in 1942 than it had been in the preceding years due to various abandonments. My principal purpose in submitting this sheet is to show that the figures in the succeeding pages for the five carriers shown in the top group represents substantially all of the Class 1 mileage in Kentucky.

[fol. 2623] I have not shown any statistics for the GM&O and the NC&StL and Tennessee Central on this exhibit, other than these mileages. Now, it so happens that the Tennessee Central is not a petitioner, so the figures on here come nearer representing the total mileage of the seven petitioners and those shown on this sheet here.

Examiner Stiles: The second block on page 3 embraces the double-track mileage, I take it.

The Witness: I don't understand that to be true, no. In other words, I think that the double-track mileage is merely considered one mile of railroad.

Examiner Stiles: What is the distinction between the first block and the second block?

The Witness: The distinction is this: the Louisville & Nashville Railroad Company, for example, operates a line of railroad between Maysville and Paris, but they do not operate any passenger trains over that section of road.

Now, in Table 2 on Sheet 4, I was able from the report to segregate the strictly Kentucky intrastate passenger revenue of two of the important lines in Kentucky, the L&N Railroad and the Chesapeake & Ohio. I wasn't able to make that segregation with respect to the other lines. Now, this, however, will give you some idea of how much of

the total passenger revenues credited to Kentucky both intrastate and interstate were strictly intrastate.

[fol. 2624] The L&N Railroad Company for the year 1936 credited to Kentucky both intrastate and interstate $2,527,960, of which $733,479 were intrastate.

I understand the figures in Table 3, Sheet 4, were arrived at by the carriers by taking their wholly intrastate passenger revenues and adding to them their interstate fares prorated on a mileage basis. For example, if 40 per cent of their entire mileage was in Kentucky, they would credit to Kentucky 40 per cent of all of their interstate revenue.

Now, in Table 3, I would like to call attention to the fact that there has been a rather severe jump in passenger revenues beginning with 1941, and they particularly have jumped in 1942. After running around the $4,000,000 mark from 1935 to 1939, it jumped up to $4,500,000, in round numbers, for 1940, and $6,500,000 for 1941, and $14,000,000 in 1942.

Table 4, Sheet 5, is the same data as Table 3, Sheet 4, except that it represents number of passengers carried irrespective of the distance. This likewise has increased in somewhat the same ratio as the passenger revenues. In 1940, it was about $3,000,000, 1941 about $4,000,000; and in 1942 about $6,500,000 for the five roads shown.

Table 5, Sheet 5, is the total passenger miles for these five roads in Kentucky intrastate and interstate traffic. There has been a still greater increase in that due to the fact as will — shown by a later table, that the average [fol. 2625] distance per passenger travelled has increased. For example, in 1935, 220,000,000—because that figure is shown in thousands—passenger miles in Kentucky jumped to 369,000,000 in 1941, and 723,000,000 in 1942.

Table 6, on Sheet 6 shows that increase in average miles per passenger. I have not totaled it, but a mere glance across there shows that there has been a rather consistent increase—the L&N Railroad having jumped from 66 miles per passenger in 1936 to 122 in 1942, showing that rail passengers are travelling a greater distance on the average.

Table 7 shows the average revenue per passenger mile. I will just call attention to the higher revenue in 1938 over those in the preceding and following years, due to the fact that they had the higher fare in effect throughout the year 1938. A slight increase in 1942 over 1941 is no doubt ac-

counted for by the 10 per cent general increase which became effective in February, 1942.

On Table 8, Sheet 7 is the average revenue received by the railroads per passenger. In this table is reflected both the rate and the distance the passenger was carried. 1938 also shows higher in this table.

Now, in Table 9, Sheet 7, I have shown the passenger miles per mile of railroad and the increase is more substantial there because it reflects the longer hauls, the greater amount of passengers travelling, and to some extent the [fol. 2626] fact that the carriers have abandoned some of their mileage in Kentucky.

Table 10, Sheet 8, shows the car miles of passenger coaches in Kentucky, and in Table 11 are shown the car miles of the sleeping and parlor cars. Adding those two together, we have Table 12 on Sheet 9, which shows total car miles, coaches, sleeping cars and parlor cars, and dividing the figures in Table 12 into the total passenger miles in Table 5, we get the average number of passengers per passenger car mile. In other words, in 1935, the Kentucky Railroads hauled an average 8.7 passengers per car mile; in 1940, this had jumped to 10.6; in 1941, it had jumped to 13.8, and in 1942, it had jumped to 22.3, which shows approximately three times as many people are travelling on the passenger trains in 1942 against 35.

By Mr. Holifield:

Q. Mr. Marks, where did you secure the figures that are included in this exhibit? Where did you secure the figures that are included in this Exhibit No. 8 that you have discussed?

A. The one that I just discussed?

Q. Yes.

A. From the reports made by the railroads to the Kentucky Railroad Commission.

Examiner Stiles: Let the next exhibit be identified as No. 9.

(Exhibit 9, Witness Marks, marked for identification.)

[fol. 2627] The Witness: My next exhibit is No. 9 for identification. While my Exhibit No. 8 related to the Kentucky figures only, all of these statistics in Exhibit No. 9 relate to the system figures of the seven petitioning carriers.

These were taken entirely from the Interstate Commerce Commission's statistical statements numbers 41-200, 42-200 and 43-200, except where I have specifically shown otherwise; that is for the years 1938 to 1942, except that the figures for the first six months of 1943 and those for the first six months of 1942 were taken from the Association of American Railroads, June, 1943, monthly reports, Series No. 406.

Sheet 2 is merely the table of contents, and Sheet 3 shows system mileages for these seven respondent carriers, and the Kentucky mileage for the same carriers and the percentage of the Kentucky mileage to the system mileage.

I would like to call attention to the fact that for the Illinois Central Railroad I have included the Yazoo & Mississippi Valley Railroad, not because I wanted to, but because I had to, not being able to separate them in the annual reports, except in a few instances, and in order to make it uniform, I carried it all the way through. I don't believe it would change the results any appreciable extent. After all, the Yazoo & Mississippi Valley Railroad is a part of the Illinois Central Railroad System, but I would have preferred not to have had it in here.

[fol. 2628] Mr. Oliver: For clarification, Mr. Examiner, might I ask a question right here? The Kentucky mileages that you show, Mr. Marks, are those mileage figures the mileage operated in passenger service or the total mileage?

The Witness: The total mileage.

Mr. Oliver: The total mileage?

The Witness: Yes, sir. On Sheet 4, I have shown the freight revenues of the respondents for the years 1938 to 1942, inclusive; also for the first six months of 1943 as compared with the first six months in 1942.

You will note that these revenues have increased from $368,000,000 in 1938, to $716,000,000 in 1942, using round numbers. The increase in 1939 over 1938 was 11 per cent, and the percentages are shown straight through each year over the preceding year.

In the last line is accumulative percentage increase over 1938,—1942 being 94.6 per cent higher than 1938.

The lefthand two columns show that this increase is continuing on into 1943,—the 1943 six months figures show-

ing an increase of 19.6 per cent over the six months of 1942.

Sheet 5 is the same information with respect to passenger revenue, 1938 to 1940, these figures have passenger revenues of around $31,000,000; in 1941, they were approximately $45,000,000, and in 1942, they jumped to $103,800,000; the increase in 1942 over '41 being 131.9 per cent, [fol. 2629] and the increase in 1942 over 1938 being 236.6 per cent.

In the first six months of 1942, the figures were $37,600,000; in 1943, $83,550,000, an increase in '43 over '42 of 122.1 per cent.

Table 4, Sheet 6 shows the same information for mail, express, milk and baggage, except that in the case of 1942, I was not able to show the figures for all four items, but only for mail and express. That is due to the fact that the Commission's statement 43,200 is streamlined, and a considerable amount of information shown in the corresponding exhibit for the previous years is omitted from the statement 43,200.

By Mr. Holifield:

Q. What commission do you refer to?

A. The Interstate Commerce Commission.

Q. All right.

A. However, by comparing the figures in the second column with those in the third column, it will be found that the mail and express for 1941 was almost all of the total for mail, express, milk and baggage. I think the figures run between 97 and 98 per cent. The increase in these items is not nearly so pronounced as the increase from passenger fares. 1941 is only 9.2 per cent over 1938 and 1942 for mail and express is only 15.2 per cent over 1941.

Table 5, Sheet 7, shows total operating expenses—that is freight, passenger, mail, express and all others, not included in the three preceding tables. The total operating [fol. 2630] revenues also show a very pronounced increase year by year from 1938 up to 1942; the 1942 figure being approximately 102 per cent higher than 1938. For the first six months in 1943, the total operating revenues were $502,000,000 against $365,000,000 for the corresponding period in 1942, an increase of 37.4 per cent.

Q. Mr. Marks, at this point, can you give the relation between the increase in operating revenues and the increase in income—I mean the net income?

A. I don't believe it would be the appropriate place right here to make that. I will have something to say about that a little farther along. Before getting into that, I would like to refer to Table 6, Sheet 8, which shows the total operating expenses. Very naturally, the expenses have gone up with the increase in revenues, but certainly not nearly as great an increase. Whereas the total operating revenues 1942 over 1938 went up 102 per cent, the expenses only went up 68 per cent, and in the first six months in 1943 where the total operating revenues went up 37.4 per cent, the total operating expenses only went up 21.2 per cent.

Table 7 shows operating ratio for all operations, including freight, passenger and others. As is well known, the operating ratio represents the amount which the carriers paid out to earn $1 of revenue. The average for 1938 was 70.2. Out of every $1 they received from operating reve-
[fol. 2631] nues, they had to pay out 70.2 cents for operating expenses. That is what that means. This shows a decrease year by year up to 1942 when it had dropped to 58.4 per cent.

Now, in the first six months of 1943, there was a still further drop in the operating ratio,—the 1943 figures being 56.9 against 64.5 for the first six months in 1942.

We come now to the railway tax accruals. There has been some evidence in this record about the increases in taxes, and these are shown in this exhibit. The total tax accruals for the respondent railroads being $40,500,000 in 1938; $43,500,000 in 1939; $51,800,000 in 1940, and $75,000,000 in 1941; $185,000,000 in 1942. That is an increase in round numbers of $110,000,000 in taxes; the percentage increase is 146.7, 1942 over 1941. That is in line with the information given by Mr. Tassin.

In the lefthand two columns, I have shown the Federal income tax of these carriers, '41 and '42.

In 1941, the Federal income tax was $29,000,000; in 1942, $131,000,000. In other words, of the $110,000,000 increase in taxes, 1942 over 1941 of these respondent carriers, $102,000,000 is accounted for by the Federal income tax. And I would say from my study of this exhibit that a large part of the remaining $8,000,000, or a substantial part of it

is accounted for by Federal payroll taxes, indicating that there has been little increase in the taxes in recent years [fol. 2632] by the states.

On that point, just looking in the so-called Blue Book—I think all of us are familiar with it—I find that the total state taxes of Kentucky between the years 1938 and 1941 remained between $5,000,000 and $6,000,000, the variation between the high and the high and the low being about $700,000, some increases and some decreases.

Table 9, Sheet 11, shows the net railway operating income for the corresponding period. The net railway operating income is what is left out of the difference between the revenue and the expenses after paying taxes, and the so-called rent item of equipment and facilities. This item has not increased in as great a percentage as the revenues due largely to the fact that they had to pay increased taxes.

Now, before leaving this sheet, I would like to revert back to Sheet 7, Table 5. From that exhibit, it will be seen that the total operating revenues of the carriers for the first six months 1943 over 1942 were about $137,000,000, and on Sheet 8 the total operating expenses for the first six months 1943 over 1942 were about $50,000,000. So the question is what became of the difference of $87,000,000. Only about $12,000,000 of that $87,000,000 found its way into net railway operating income as shown on sheet 11.

That seems to substantiate the views expressed by Mr. Tassin that about 80 per cent of any increased revenues [fol. 2633] would be paid out for taxes and perhaps a few other items before finding its way into the net railway operating income.

That completes my explanation of that exhibit.

By Mr. Holifield:

Q. Do these figures come from the same source that you got the other figures from?

A. Do you mean Exhibit 9 as compared with Exhibit 8?

Q. Yes.

A. No, Exhibit 8, as I said, came from the reports made to this commission by the railroads, but which are the same as they do make to the Interstate Commerce Commission, whereas, as I explained in the beginning, the figures in the exhibit I just mentioned and have just described

came from the Interstate Commerce Commission's statistical Bureau of Figures.

Examiner Stiles: The authority is shown on sheet 2.

The Witness: Yes, that is right.

Examiner Stiles: Let the next exhibit be identified as No. 10.

(Exhibit 10, Witness Marks, marked for identification.)

The Witness: Now, on Exhibit 10, I have undertaken, as best I could, with the material available, to compute rate of return of respondents for the years 1938 to 1943.

On sheet 1 of this exhibit, I have shown a summary of investments in railway property of the different lines which were likewise taken from the same source as the preceding Exhibit No. 9. These figures, I think, are the same figures [fol. 2634] which formed the basis for Mr. Tassin's investment figures shown on page 6 of his Exhibit No. 6. That is so far as investment in railway property is concerned. I did not have available to me the figures showing cash and materials and supplies on hand, and I tried to arrive at that figure as best I could.

My first approach to it was to see what the Commission had to say about what was a proper allowance for working capital, which is a term which embraces these three items. I found on page 2410 of the ICC Act Annotated, this statement:

> "Experience with the actual operating needs of carriers indicates that as a rule the requisite amount of working capital for carrier purposes is substantially less than 20 per cent of the annual operating expenses and in many cases is a much smaller amount."

Numerous cases are cited in support of that statement. Right there, I do want to explain that this had reference to what the Commission considered a proper amount of working capital, and is less, I think, than the actual amount of working capital ordinarily used by the railroads.

Another approach was obtained by reference to statistical summary No. 26 gotten out by the Association of American Railroads, Bureau of Railway Economics, dated September, 1942, which shows substantially the same information as I am undertaking to show here, and I found

the actual amount of working capital on hand for all Class 1 [fol. 2635] railroads in the United States ranged from 23.7 per cent to 33 per cent of the total operating expenses.

Now, I felt it would be entirely fair, in view of all of that, to employ a figure of 30 per cent of the total operating expenses. In other words, the figures I have shown here for cash and materials and supplies are 30 per cent of the total operating expenses shown on the following sheet. I am quite certain, however, that the final results in rate of return would not be changed more than a very small amount if I had used, say, 35 or 40 per cent, because the working capital bears such a small proportion to the property investment.

In 1942, the property investment figures were not shown in this streamlined report of the Interstate Commerce Commission statement 42,300, and so I have been forced there to arrive at some estimated figure, and I selected for 1942 the highest figure in the preceding four years which happens to be 1941, and I have carried that on into 1943. I believe I am safe in doing that, because it is pretty well known that the railroads have not been in a position to make any substantial property investments during the past two years, due to their inability to buy equipment and engage in major construction projects.

Furthermore, it is well known that they have been engaged in a rather strong movement to abandon certain property on their lines which they considered not pos- [fol. 2636] sible, and which I assume would be deducted from the property investment.

So, with this explanation, I have here my base figures for the different years on which to compute a rate of return for the seven respondents or petitioning carriers. I had hoped this same information would be put in by Mr. Tassin, and I believe it will be shown when he breaks down his figures on page 6 of Exhibit 6, but he has shown the average for 22 years instead of showing it year by year, and in one of his succeeding exhibits, he shows the figures year by year for the whole Southern Region, but not for these particular carriers.

Now, I will pass over to Sheet 2 of this exhibit, taking first, the year 1938, the figures shown as total operating revenues are the same as those shown on Sheet 7 of Exhibit 9. The total operating expense figure is the same as

shown on Sheet 8 of Exhibit 9, the operating ratio was computed by dividing the revenues into the expenses. The net operating revenue is the difference between the revenues and the expenses. The railway tax accruals are the same as shown on Sheet 10 of Exhibit 9. The net railway operating income of $79,000,000, round figures, are those shown on Sheet 11 of Exhibit 9, and the equipment and joint facility rents item is merely the difference between the sum of the tax accruals and the net railway operating income added together and then subtracted from the net operating revenues. In other words, the net oper-
[fol. 2637] ating revenue is divided into three factors, tax accruals, rents, and net railway operating income,—if you have two, you can get the other.

Now, that net railway operating income for 1938 represents 2.9 per cent of the valuation shown on the preceding sheet, and merely for purpose of comparison, I have shown the corresponding figure as computed by the carriers in their statistical summary No. 26 of September, 1942, for all railroads in the United States, that is all Class 1 railroads in the United States.

It appears that these seven respondents had a return about twice that of the average for the United States. The 1939 figures are computed in the same manner, and it will be observed that the respondents' return had increased from 2.97 to 3.76.

In 1940, it had increased further to 3.92; 1941, to 5.46. In each of these years, the return for the respondent carriers was substantially higher than the average of the Class 1 carriers for the United States. In 1942, it had increased further to 6.67.

Now, in the lefthand column, I have undertaken to compute the corresponding figure for 1943. It was brought about in this way: in Exhibit 9, on Sheet 7, I showed that for the first six months in 1943, the total operating revenues were 37.4 per cent higher than for the first six months
[fol. 2638] in 1942; so, extending that to a yearly basis, I get the figure of $1,186,000,000 shown under 1943 as total operating revenue. In other words, this figure is 37.4 per cent higher than the corresponding figure for 1942.

Now, on operating expenses, I used the same formula, increasing the 1942 figure by 21.2 per cent because the total operating expenses for the first six months of 1943

of these respondent carriers were 21.2 per cent higher than for the first six months of 1942. The ratio works out 51.5 for the year '43.

In that operating revenue is the difference between the total operating revenue and the total operating expenses.

Now, the next step was to get my net railway operating income of $196,763. That was obtained from Sheet 11, the carriers estimated there that their net railway operating income for the first six months of 1943 over the first six months of 1942 was 17.7 per cent.

Examiner Stiles: You said Sheet 11, but you did not identify the exhibit.

The Witness: Sheet 11 of Exhibit No. 9. Now, up to this point, I have got my net operating revenue and my net railway operating income. For equipment and joint facility rents I have used the figure for the preceding year in the absence of actual figures, $6,605,357. As I explained before, the net operating revenue is the sum of the tax [fol. 2639] accruals, the rents, and the net railway operating income,—and having the rents and the net railway operating income, I can obtain the third factor, $371,000,000 as estimated railway tax accruals for 1943.

Now, I have undertaken to sub-divide those accruals between Federal income taxes and all other taxes. Obviously, it must be an estimate, but in view of what has been said here, and what has been shown by the carriers' own methods, I have assumed that 80 per cent of the increase in net operating revenues, '43 over '42, would be paid over to the Federal Government in the form of Federal income taxes. In other words, that item increase '43 over '42, $216,000,000, in round numbers; I have taken 80 per cent of that and added it to the Federal income taxes for 1942, and obtained the figure of $204,509,292 and subtracted that from the total railway tax accruals to get the estimated taxes for all other purposes, and that is shown as $66,762,000. I think a comparison of that figure with the two preceding years, $53,000,000 and $45,000,000 looks like it is about in line. Now, my only purpose in trying to arrive at the Federal income tax this year is to determine what the carriers' rate of return would have been if they had computed it before taking off Federal income taxes. I don't have the Federal income taxes for the years prior

to 1941, but I do have them for 1941 and 1942, and this estimate for 1943.

[fol. 2640] Now, taking the net railway operating income of $148,729,567 in 1941 and adding to it the Federal income tax of $29,444,853, I get a total figure of $178,174,420, which I am calling, for lack of a better term, net railway operating income before Federal taxes. Now, that figures out 6.54. In other words, if they had computed their return before paying the Federal taxes, their return would have been 6.54 for the year 1941 instead of 5.46. In 1942, a corresponding figure would have been 10.84 instead of 6.07, and for 1943, 17.96 instead of 7.05.

That completes my statistical data, but I have one more matter that I would like to mention before closing.

Much has been said about uniformity of fares in Kentucky and also Kentucky vs. Interstate Fares. It has been shown here that so fare as the Chesapeake & Ohio Railway is concerned, they are not here asking in this proceeding authority to increase any fares on the Big Sandy Line, extending southward from Ashland, Kentucky. At the present time, they maintain an intrastate fare, on that line published in a tariff on file with the Kentucky Railroad Commission identified as K.R.C. No. P-66, a basis for coach fares on that line. It is true these fares are published with an expiration date. They have been in effect for some three or four years and they have been extended from time to time. They were scheduled to expire June 30, 1943, but by a supplement, the expiration date was [fol. 2641] extended to December 31, 1943.

By Mr. Holifield:

Q. What fare is that?

A. This is a coach fare, both one-way and round-trip, applicable on the Big Sandy line of the Chesapeake & Ohio, and is designated as an experimental fare.

Q. What is the fare,—what is the rate?

A. It is made with relation to the one-way unrestricted fare. We all know that the one-way unrestricted fare is 3.3 cents per mile, and I have confirmed that by reference to the tariff itself, that is C&O KC No. 5 tariff. It shows here that where the unrestricted fare is so much, then, the one-way coach fare is so much, for example, where the unrestricted fare is $3.30, which is the fare for 100 miles,

the one-way coach would be $1.65,—In other words, it is 1.65 cents per mile, or the same as in effect on the L&N and the Southern Railway in Kentucky; and on round trips, it is 1¼ cents per mile, or somewhat less than the round-trip fare being maintained by some of the respondents in this proceeding.

Mr. Mohr: Do you mean 1¼ cents or 1.4?

The Witness. No, it is 1.25. That completes my testimony unless you have something that you want to ask me.

Mr. Holifield: I have not. At this time, let me offer for filing Exhibits 7 to No. 10, inclusive, by the Witness J. E. Marks.

Examiner Stiles: Exhibit 7 to 10, inclusive are received [fol. 2642] in evidence.

(Exhibits 7 to 10, inc. Witness Marks, received in evidence.)

Examiner Stiles: Do you wish to cross examine?

Mr. Oliver: Yes, sir, I have a few questions that I would like to ask.

Cross examination.

By Mr. Oliver:

Q. Take up first the subject that you discussed last, namely, the fares on the Big Sandy lines of the C&O. Isn't it a fact that those fares are, while they may be labeled experimental fares, aren't they bus competitive fares of some sort, or do you know?

A. I assume they are.

Q. Well, now, isn't it a fact also that those fares apply locally on that line and that from a point on the Big Sandy line to other points in Kentucky, the regular 2.2 cent fare is applied?

A. That is correct.

Q. Now, will you turn, please, to your Exhibit No.—

A. But on that point, if it is possible to defeat those through fares as easily as these people say, I am wondering if it is not being done up there today.

Q. Will you turn, please, to your Exhibit No. 9, page 4?

A. All right.

Q. The figures shown on page 4, of course, are gross figures?

A. Gross freight revenues, yes, sir.

[fol. 2643] Q. Looking at the figures for the first six months of 1943, it is a fact, is it not, that those figures reflect the increase granted in Ex Parte 148, in the freight rates?

A. They would from January 1, 1943, to May 14, 1943, inclusive.

Q. In other words, the increase insofar as freight rates is concerned was taken off or suspended as of May 14, was the date?

A. May 15.

Q. May 15, 1943?

A. Yes, sir.

Q. And assuming the same volume of traffic in the latter half of 1943, the revenues would be correspondingly less, would they not?

A. Yes, to the extent of about 3 per cent; I will make that about——

Q. Wasn't it about 7 per cent?

A. No, it is a little more than 4 per cent; the maximum was 6; it varies from 3 to 6; with coal less than 3 per cent, about 4 per cent.

Q. Will you turn to page 7 of that same exhibit?

A. Sheet 7?

Q. Sheet 7 of Exhibit 9.

A. All right.

Q. Now, if we were to undertake to make a comparison [fol. 2644] between the total revenues received by these Kentucky lines during the latter half of 1942, you would deduct from the 1942 figures the figures for the first six months of 1942, would you not?

A. Yes, sir.

Q. Well, now, looking at the total revenues for the seven Kentucky lines, and deducting the revenues for the first six months of 1942 from the total figures for 1942, you would get, roughly, $500,000,000, would you not?

A. That is correct.

Q. Which would compare with $502,500,000, roughly, in the first six months of 1943?

A. That is correct.

Q. Doesn't that indicate to you that the increase in railway revenue has about reached its peak?

A. No, sir.

Q. Do you think that this reflects a seasonal condition?

A. I think it reflects, in other words, my opinion is that it is normal for the railroads to do less business in the first half of the year than in the last half of the year.

Q. Does that apply to passenger business as well as freight under modern-day conditions?

A. Well, I don't know about passengers.

Q. Do you think that the passenger business is the largest in the first half of the year, larger than it is in the [fol. 2645] latter half of the year under present conditions?

A. I don't know why there would be any; any statement I would make along that line would be simply a guess.

Q. The fact remains if you take the first half of 1943 and compare it with the last half of 1942 from a total operating revenue standpoint, there has been little or no increase in operating revenues,—that is a fact as shown by your statement, is it not?

A. Well, but as I say, under normal conditions, the first half of the year would be less than the last half of the preceding year. In this case, as you say, it about equals it. In other words, there is a progressive uptrend right on through these years, and the first six months of 1943, and so far as we can see, I don't see why we should have a higher amount of business the last half of 1943, than we did in the last half of 1942.

Q. And you think that would apply to passengers as well as freight?

A. Let's turn back to Sheet 5—there is a progressive increase in passenger revenues for each year, and it continues on up into 1943.

Q. Well, now, Mr. Marks, with the present situation as to railroad equipment, taking into consideration now that no equipment, no passenger equipment is being built or added to the equipment that the carriers now have, there is a point, is there not, at which they will reach its satura- [fol. 2646] tion point, so to speak?

A. Yes, sir, I think so, but I don't know whether that has been reached or not.

Q. You have a pretty good idea that it has?

A. When I rode on the trains last Spring, I thought it had about reached its limit, but it is a whole lot worse this Spring.

Examiner Stiles: Before we go too far away from this subject——

Mr. Oliver: Yes, sir.

Examiner Stiles: Let me ask this. You don't recall any reason why passenger travel would be likely to be more in the latter half of the year than in the first half of the year? Is passenger travel affected in some considerable extent, do you think, by vacation travel?

The Witness: I would think it would be higher normally in the latter half of the year than in the first half, but not having seen any figures for the first half vs. the last half, like I have with freight, I just hesitate to express an opinion on that.

Examiner Stiles: Do you think that the vacation travel would be heavier in the latter half of the year than in the first half?

The Witness: I think we would find that we have more holidays in the last six months of the year, and I know that [fol. 2647] most people take vacations after July 1 than they do before July 1, and we have our Labor Day and Thanksgiving and Christmas in that portion of the year, which is a very heavy period of travel, and it seems to me that it ought to be higher in the Fall, in the last six months, than in the first six months of the year.

Mr. Miller: I may point out the same thing Mr. Oliver suggested on freight might also be applied to this situation in the year 1942 as compared with the first six months, which shows the last six months of '42 was higher for the total traffic.

Mr. Oliver: I can't concede that they were proportionately higher, but I will concede that they are somewhat higher.

The Witness: I will say it might be greater or a lesser per cent than I have shown, but we have this barometer of the first six months to go by, and it is the best barometer that we have, I think.

By Mr. Oliver:

Q. Most of us stay at home these days instead of traveling at vacation time, don't we?

A. We should.

Q. Please turn to Exhibit No. 10, Sheet 2.

A. All right.

Q. Looking at the year 1943, total operating revenues, the reference mark indicates that you have used, in arriving at the estimated total operating revenues for 1943, the same [fol. 2648] rate of increase over '42 as the first half of '43 over the first half of '42. That is correct, isn't it?

A. That is correct.

Q. Now, in making that estimate, did you take into consideration at all the suspension of the Ex Parte 148 increases insofar as freight is concerned?

A. I did not.

Q. So that that would have to come out of that estimated figure, would it not?

A. That should have some—that should have some bearing on it, but, as I said before, it would be only a little more than 4 per cent, and it would be only applicable for a half year, so it should not change those figures by more than 2 per cent if my formula is correct.

Q. Well, now, insofar as the passenger revenue that goes into that estimated figure, you have assumed also that the passenger revenue in the latter half of 1943 would increase in the same proportion as the first half of 1943 increased over 1942, have you not?

A. That is correct.

Q. Do you feel that is going to happen, or do you think there is a possibility that the railroads can continue to increase their passenger traffic in the latter half of this year as they increased it in the first half over the first half of 1942?

[fol. 2649] A. I think it is fair to assume that it will.

Q. Well, now, Mr. Marks, looking at equipment and joint facility rents on the same sheet, Sheet 2 of Exhibit 10?

A. Yes, sir.

Q. Why didn't you use the same formula for arriving at equipment and joint facility rents that you used in arriving at total operating revenue?

A. It was not available to me, and I couldn't find it in the Commission's report which I had.

Q. You didn't know what the increase had been?

A. No, but after all, that is a relatively small item in the total figure, and it doesn't seem to bear any particular relation to income; I think it is shown by the fact that back in 1938 when your revenues were only $427,000,000, your equipment rents were $6,809,000, and in 1941 when your revenues were 50 per cent higher, your rents were 66⅔ per cent lower.

Q. You might have used the 1941 figure just as well as the 1942 figure, might you not?

A. Well, I was using the highest in order to give you the benefit of it, and to make your net that much lower.

Mr. Oliver: Well, that is very nice of you. I believe that is all. Thank you, sir.

By Mr. Gray:

Q. Will you turn to Sheet 3 of your Exhibit No. 8, Mr. Marks? Just for the purpose of correcting a possible error, could you check the miles of railroad operated for [fol. 2650] passenger service of the Illinois Central Railroad in Kentucky? Is that figure correct?

A. Do you mean the figure of 563?

Q. That is right.

A. That is shown in your reports to us as being the average miles of road operated in passenger service by the Illinois Central Railroad during the year 1942.

Q. I want you to check it, if you could. It looks a little high to me.

A. Do you think that the difference between that and your freight mileage should be greater than shown here?

Q. That is just my opinion.

A. I will be glad to check it if the Examiner will give me about two minutes.

Examiner Stiles: During the recess?

The Witness: All right.

By Mr. Gray:

Q. On your Exhibit No. 10, the total operating income for the year 1943 as computed by you was computed by using a 37.4 increase as the basis.

A. Just one moment, no. 17.7 per cent as shown on Sheet 11 of Exhibit 9.

Q. That is your net. Did you use that?

A. I used 17.7 per cent.

Q. I don't think that you understood me. I can't get it straight in my own mind. Sheet 11 deals with net rail- [fol. 2651] way operating income. I asked you for the percentage of increase used for total operating revenues. Did you use that 17.7 per cent on your total operating revenues?

A. No, on my total operating revenues I used 37.4 per cent as shown on Sheet 7, Exhibit 9.

Q. That is right. Now, that 37.4 per cent increase is the percentage of increase of both freight and passenger?

A. Yes, and all other operating revenues.

Q. Then the figures shown on Sheet 4, Table 2 of your Exhibit No. 9, the percentage of 19.6 per cent——

A. I got it——

Q. A change in that percentage of increase would also change your percentage of increase in total operating revenues.

A. Do I understand what you are undertaking to say is if the freight revenue for the last half of 1943 should be less than 19.6 per cent less than over the last half of '42?

Q. Then that would make a difference in your percentage of increase used by you to compute the whole year's total operating revenue?

A. Well, obviously, if the operating revenue for the last half does not stand up against the first half, that is the same rate of increase, then I would have to reduce that figure.

Q. On Sheet 4 of your Exhibit No. 9, dealing with freight revenues, you show an increase of 19.6 per cent, increase in [fol. 2652] the first six months of 1943 over the first six months of 1942. Will you break that down into months for me—the per cent of increase over the preceding months of 1942?

A. I couldn't do that without going back into your monthly reports which I don't have here convenient, but if it would help any, I would be glad to work them out and submit it at any time that it would be convenient.

Q. I would like to have it, I would like for you to show the——

Examiner Stiles: For what roads? Just for the Illinois Central or for the others too?

Mr. Gray: I think this should be set forth for all of them. This deals with all the roads there; I think you should show the percentage of increase in January, 1943, over January, '42, and the same figure '43 for February as compared with '42 and on up through June.

The Witness: I have no objection to doing that.

By Mr. Gray:

Q. From your own knowledge, isn't it true that the percentage of increase in January, '43 over January, '42 was very much greater than the increase in June, 1943, over June, 1942?

A. I wouldn't know without checking back against those monthly records, I couldn't say; I was using as much of the year of 1943 as available.

Q. As compared with the corresponding month in 1942?

A. That is true.

[fol. 2653] Examiner Stiles: You say that you don't have those records. How long will it take you to get them and prepare the exhibits?

The Witness: I think in my Lexington office I have these reports, month by month. If the carriers will be good enough to mail me immediately the monthly reports for the first six months,—I am sure Mr. Tassin has it readily available.

Examiner Stiles: If the carriers has that evidence and Mr. Marks does not, I am wondering why the carriers don't put that evidence in themselves. It would expedite the matter.

Mr. Oliver: Mr. Tassin says that he can furnish the information.

Examiner Stiles: Now, state on the record what it is that you want permission to file?

Mr. Gray: We want permission to file the percentage of freight increase in 1943 over 1942 by months for the first six months of 1943.

Mr. Tassin: That is freight revenue, Accounts Nos. 101 and 121.

Mr. Miller: Mr. Examiner, the figures in this exhibit are in amounts. Why not have the exhibit to at least include the amounts for each month rather than the percentages so that the comparison can be made in that way.

Mr. Gray: The percentages will suit our purpose.

Mr. Miller: Will you put the amount in?

Mr. Tassin: May we be off the record for a second, Mr. [fol. 2654] Examiner?

Examiner Stiles: Off the record.

(Discussion off the record.)

Examiner Stiles: Back on the record. It is understood that in addition to the percentages, that the figures from which those percentages are derived are to be stated. Permission is granted to file that within ten days. Send two copies to the Secretary of the Commission with advice that you have mailed copies to other parties of record.

By Mr. Mohr:

Q. Get your Exhibit No. 7. What is the purpose of this exhibit?

A. For whatever it may be worth.

Q. How do the bus fares in Kentucky compare with the bus fares from and to Kentucky, interstate, do you know?

A. No, I do not.

Q. Don't you know that they are on the same basis?

A. I think that they are.

Q. Do you know on what basis they are computed?

A. I believe that they were originally computed on a basis of 1½ cents per mile for one-way trips and 10 per cent less for round trips for the relatively short hauls of something like 100 miles, and as you go over that distance, they graded down.

Q. But they have deviated from that basis in numerous instances, haven't they? You own exhibit shows they are not uniform.

[fol. 2655] A. I think they have.

Q. Now, on your Exhibit No. 8, look at page 4 of Exhibit 8 for a moment. I was curious to know why you only show the L&N and the C&O in that top bracket.

A. Because I couldn't get the other roads.

Q. Is that the reason?

A. Yes, sir. While on that point, I was trying as best I could to determine what it would cost the Kentucky public to get this increase, and I put that in there to show as much of the Kentucky intrastate traffic as I could, and from that date on, that Sheet 4, which you have just referred to, the Commission in its decision in the Kentucky case estimated that based on 1942 traffic, the increase would be $400,000.

I was very pleased to note that Mr. Tassin's Exhibit 6, page 3 came almost confirming that,—he showed $426,000 for the increase for the last ten months of 1942, and the first two months in '43, which just almost confirms our estimate of $400,000.

Q. Do you have any traffic or transportation conditions to point to or to advance for insisting on the continuance of a lesser level of passenger rates in Kentucky than in the North?

A. We have a lower freight schedule in Kentucky than we have on interstate Traffic, and that has been approved by the Interstate Commerce Commission in a 13th Section Case.

[fol. 2656] Q. That does not answer my question. It has to do not with the interstate, but with the conditions between Kentucky on the one hand, and the north on the other, Official territory on the other.

A. We have never been able to get the benefit of the North in our freight adjustments, and I don't see why we should try to get our passenger rates raised on a parity with the North.

Q. You have never contended for a lesser adjustment of rates than in the North, have you, in Kentucky, for a lesser level?

A. We have contended for——

Q. For a lesser level in Kentucky than in the North?

A. We have contended for the Official territory basis, but I don't know that we have contended for a lesser basis.

Q. Why should there be a lesser basis in the case of passenger rates than in the case of freight rates?

A. Certainly we don't want to lose what we have got until we get what we think we are entitled to.

Q. Do you think that the interstate level of passenger rates to and from Kentucky is too high?

A. I would be glad to see them lowered to the Kentucky level.

Q. But you wouldn't go to the extent to say that you thought that they were too high?

A. We haven't been sufficiently interested to file a com-[fol. 2657] plaint against them.

Q. Now, your Exhibit No. 9, page 3, you show there the ratio of Kentucky mileage to the system mileage. I didn't quite understand why that separation was made.

A. Well, I just thought it might have some value in here to show that. I haven't used those percentages anywhere in my computation.

Q. I couldn't see where you had either, and I was wondering if you had any idea of using those in your brief to make any calculations?

A. I had not thought that far ahead. I really have no hidden purpose in doing it. I notice that they are about the same as Mr. Tassin shows.

Q. It is not your thought the railroad should be required to establish differences or varying charges on different portions of this line depending on the density of its traffic either freight or passenger traffic, is it?

A. No, I wouldn't analyze it to that point of refinement.

Q. As an experienced accountant, have you anything to add as to the carriers contention that the railroads should be permitted to earn a fair return on their property devoted to public service viewed over a period of five or ten years, rather than based on a period of one year at a time?

A. Well, I think they are entitled to a fair return on their properties, yes.

[fol. 2658] Q. And in determining that question, it is proper to consider a number of years, rather than a single year at a time? You would go along with that, would you?

A. I think Mr. Tassin has gone entirely too far back in his calculations. I don't think that you should now come along and try to make up for those depression years of 1930, '31 and '32 when very few other people have been able to make that up.

Q. How far would you go?

A. I have not decided on any particular number of years.

Q. But it would be proper in your judgment to consider a number of years rather than one year at a time?

A. I think so.

Q. Disregarding the fact that the railroads are earning a considerable profit now, do you know why the railroads now should not be permitted to make a fair charge for the service of transporting passengers in Kentucky?

A. I think that you pick the most inopportune time possible to try to do that. In the first place, the passenger is not getting the service today that he was getting on the lower fare of 1.5 a few years back, and, in the second place, when you take a dollar from the public, after taxes, you only get 20 cents out of it, and if you are going to raise your

fares and rates to get your net up to what you think it should be, it would be an awful burden on the public.

[fol. 2659] Q. Do you think that it would be a more opportune time to try to increase fares to a reasonable level after the war's depression occurs? Would you advocate that?

A. I am not conceding that they are not on a reasonable level now.

Q. I understood you to say in reply to my previous questions that you found no fault with the Interstate level?

A. I said that we had not been sufficiently dissatisfied with them to go to the trouble to file a formal complaint against them.

Q. Would you be willing to express an opinion as to what would be an appropriate time to increase passenger fares to a reasonable level—assuming for the purpose of this question that they are not on a reasonable level now?

A. I would rather not do that.

Q. Would you be willing to express an opinion as to whether the state and interstate rates should be on the same level?

A. I think it would be desirable that they be on the same level, but, of course, that level can be reached by the reduction of the interstate fares as well as an increase in the intrastate fares.

Mr. Mohr: That is always true. I think that is all. Thank you.

Examiner Stiles: We will take a short recess.

(Whereupon, a short recess was taken.)

[fol. 2660] Examiner Stiles: Did you check that report for counsel, Mr. Marks?

Mr. Gray: Mr. Marks checked it and satisfied counsel.

Examiner Stiles: You are excused, Mr. Marks.

(Witness excused.)

Examiner Stiles: Has the Kentucky Railroad Commission any further evidence?

Mr. McCarthy: I wish to call Mr. Tanner, please.

PAUL E. TANNER was sworn and testified as follows:

Direct examination.

By Mr. McCarthy:

Q. State your name, age and residence.

A. My name is Paul E. Tanner; 31 years of age; Frankfort, Kentucky.

Q. Do you hold any official position, and, if so, what?

A. I am Supervisor of Franchise Taxes for the Department of Revenue here in Frankfort, for the state of Kentucky.

Q. State briefly your experience in revenue and financial matters.

A. Upon graduation from the University of Kentucky in 1937, with a degree in Accounting, I came to the Department of Revenue, and have been an accountant in the handling and auditing of income taxes, corporation license taxes, and the valuation of bank shares; since October of 1942, I have been Supervisor of Franchise Taxes, the principal [fol. 2661] duties of which consist in the computation of the assessments of the railroads and public utilities subject to the approval of the Kentucky Tax Commission, which has legal authority to levy such assessments or make such assessments, rather.

Q. For whom are you appearing in this proceeding?

A. On behalf of the Railroad Commission.

Q. Have you an exhibit which you wish to file in this case?

A. Yes sir.

Examiner Stiles: This will be identified as Exhibit No. 11.

(Exhibit 11, Witness Tanner, marked for identification.)

By Mr. McCarthy:

Q. Who prepared this exhibit, Mr. Tanner?

A. It was prepared by Miss Foreman, in the Department of Revenue, at my direction, and I am personally familiar with the method.

Examiner Stiles: This just states "Petitioners' properties", but does not identify them. So that there may be no doubt in the record, I suggest that you identify the carriers embraced in the exhibit.

The Witness: I can give you the seven roads; Chesapeake & Ohio; CNO&TP; the Gulf, Mobile & Ohio; the Illinois Central Railroad; the Louisville & Nashville Railroad Company; NC&StL and the Southern.

By Mr. McCarthy:

Q. Are the figures in this exhibit true and correct to the best of your knowledge and belief?

A. They are.

[fol. 2662] Q. Please proceed with an explanation of the exhibit.

A. These figures were secured from the Income and Franchise Tax Returns of the seven roads for the years indicated. The first column is the franchise assessments as of December 31 for the year indicated.

The franchise assessment is determined by the capitalization of the net railway operating income—let us say a five-year average of the net railway operating income, at 6 per cent, and averaging with the 5-year average on the stock and bond value of the road for the same five years. The proportion allocated to Kentucky is based on the proportionate mileage in the state of the entire system. As is indicated, these assessments are relatively stable in that the Kentucky Tax Commission has a policy of not raising or lowering an assessment more than 6 per cent of a given road in a given year, unless there has been some substantial change in the nature of the road's operations.

The second column "Income tax accruals" is the income tax accrued to the state of Kentucky for the year indicated. Our state rate is 4 per cent, and the decline in 1942 from 1941 is caused primarily by the fact that the Federal income tax accrued is a deduction before arriving at the net income subject to the state tax.

Q. Before you leave column 2, is your state income tax derived by taking your tax of 4 per cent upon the earnings [fol. 2663] of the preceding year?

A. That is right. The figures here are the accruals; at the end of the year when the road computed how much they had made, then they set up this provision to pay the taxes.

Q. Take your 1939 income tax accruals, $308,082.07, just what period does that represent?

A. That represents the tax to be paid in 1940 on the 1939 income, but it had become a liability as of December 31, 1939.

Q. Please proceed.

A. The "franchise tax accruals" line or column represents the amount of tax paid to the state of Kentucky by the seven carriers during the year following the December 31 assessment. In other words, the tax on the $229,122,492 assessment as of December 31, 1938, is the $640,653.35 paid in 1939. This tax is at the rate of 5 cents per $100 on real estate, and 50 cents on all other property, both tangible and intangible.

Q. Has that rate been changed during the period from 1938 to 1943?

A. It has not. That is a statutory rate.

Q. Proceed, please.

A. That is about all that I can say from the exhibit.

Q. Is it not a fact that the counties and cities and towns base their taxes and rates upon these assessments?

A. If you like, I can give you the procedure as to how it is

[fol. 2664] Q. Please do so.

A. Because of the great difficulty in having a carrier assessed by each of its local districts, the Legislature has seen fit to have all of its property assessed by the State Tax Commission here at Frankfort. After this is done and these assessments in the lefthand column determined, they are broken down as to taxing jurisdictions as to the counties and the cities and the various school districts.

Q. On what basis?

A. The real estate and physical property that can be allocated is assigned to the locality in which it is. Most roads also have a definite value of rolling stock which they allocate along the line at so many thousands of dollars a mile, and it is based on the miles of main track in each given locality. In some towns it may be only a half a mile, and in some counties it may be 40 or 50 miles; and the franchise value is also allocated on the basis of the mileage. That is provided by statute.

Franchise value is something that is not exactly understood by a number of people. After we have computed the value of the road by using its capitalized earnings and stock and bond value and allocating its mileage to Kentucky, the fraction of it, then we equalize at 80 per cent because most other property in the state is assessed at 80 per cent approx-

[fol. 2665] imately, and in order to *order to* bring the roads down, that is used, and if a given road is figured at $100,000,000 and its real estate and track figures, say, $40,000-

000, and its rolling stock and tangible personal property figures twenty-five, then the remaining thirty-five of the hundred is considered to be franchise, and is subject to the full local and state rates. That thirty-five million is allocated on the basis of the miles of the main track in each jurisdiction. After those allocations have been made, certifications of these values are sent to the county clerks and the clerk prepares a bill which is collected by the county sheriff for the county, and the county schools, and the city tax collector, as a rule, handles his own. They are subject to the full local rate which varies from one jurisdiction to another. These maximum rates are fixed by statutes as to what each local jurisdiction can charge.

Q. Is there much variation in the local rates from year to year?

A. No; primarily because your local jurisdiction needs the money, and they are as high as they can go.

Q. I notice in your exhibit the figure "6" did not print very well on the mimeograph machine.

A. Do you mean in the 1941 income?

Q. Give us the 1939 final assessment, please, sir.

A. $229,506,648.

[fol.2666] Q. And please give us the 1939 franchise tax accrual.

A. $640,653.35.

Q. And please give us the 1941 income tax accrual.

A. $673,506.29.

Q. It was figure "6" that didn't print well?

A. Yes sir.

Mr. McCarthy: I offer Exihibit 11.

Examiner Stiles: Exihibt 11 is received in evidence.

(Exhibit 11, Witness Tanner, received in evidence.)

Examiner Stiles: Is there any cross examination of this witness?

Mr. Oliver: I have no questions.

Examiner Stiles: You are excused.

(Witnessed excused.)

Examiner Stiles: Anything further?

Mr. McCarthy: I believe that is all.

DORIS S. WHITNACK was sworn and testified as follows:

Direct examination.

By Mr. Miller:

Q. State your name for the record.

A. Doris S. Whitnack.

Q. Your business address?

A. Federal Office Building No. 1, Second and D Streets, Southwest, Washington, D. C.

Q. By whom are you employed?

[fol. 2667] A. Employed by the Office of Price Administration, in the transportation branch.

Q. What is your position with that employer?

A. I am a transportation economist in that branch.

Q. Will you please describe your education and experience in connection with such duties?

A. Graduated from Radcliffe College, A. B. in Economics, and have done post graduate work principally in transportation, corporation finance, and statistics at Boston University, American University and George Washington University; been employed as an economist by the executive office of the President, National Resources Planning Board, and for the past two years and a few months by the transportation branch of the Office of Price Administration.

Q. Was the task of preparing some statistics in connection with this case assigned to you?

A. It was.

Q. Have you prepared some exhibit containing such statistics?

A. Yes.

Q. Would you please identify them in the order in which you will discuss these various exhibits, reading the titles as you give the numbers, starting with No. 12?

(Exhibit 12, Witness Whitnack, marked for identification.)

The Witness: Exhibit No. 12 for identification is a one-page document entitled "Net railway operating income be-[fol. 2668] fore Federal income taxes selected railroads operating in Kentucky, 1936-42-43. That is the first exhibit that I will take up.

(Exhibit 13, Witness Whitnack, marked for identification.)

The Witness: My next exhibit, No. 13, consists of one sheet, and bears the caption "Freight service operating ratio selected railroads operating in Kentucky 1936-1943."

(Exhibit 14, Witness Whitnack, marked for identification.)

The Witness: My next exhibit, No. 14, consists of one sheet, and bears the caption "Passenger service operating ratios selected railroads operating in Kentucky 1936-1943."

(Exhibit 15, Witness Whitnack, marked for identification.)

The Witness: My next exhibit, No. 15, consists of one sheet, and is entitled "Operating revenues and expenses assigned to passenger service ten railroads operating in Kentucky."

(Exhibit 16, Witness Whitnack, marked for identification.)

The Witness: And following that is my Exhibit No. 16, which is an appendix to the last exhibit marked Exhibit No. 16, consist of a number of pages, and shows the method used in assigning 1943 revenues and expenses to passenger service.

(Exhibit 17, Witness Whitnack, marked for identification.)

The Witness: And my Exhibit No. 17 is a one-page document entitled, "Valuation data for selected railroads oper-
[fol. 2669] ating in Kentucky."

By Mr. Miller:

Q. Will you discuss briefly your Exhibit No. 12?

A. Exhibit No. 12 was prepared to show the net railway operating income before Federal income taxes for selected roads which operate some mileage in Kentucky. The exhibit, I think, speaks pretty well for itself, showing the large increases, as, for example, for the 12 months ended June 30, 1943, these roads showed—the nine roads indicated here showed 192.8 increase over the average for 1936

to 1939, and an increase of 79.4 per cent over the 12 months ended December, 1941.

Mr. Oliver: Might I ask a question for clarification at this point? I notice that you show 12 months ended June 30, 1943. Does that column duplicate the figures or a portion of the results shown in 1942?

The Witness: Yes, it is the 12 months immediately preceding July 1, 1943, so that it does include the last half of 1942.

Mr. Oliver: Thank you.

By Mr. Miller:

Q. Will you proceed to discuss Exhibit No. 13?

A. Exhibit No. 13 is presented to show the improvement in freight service operating ratios for five roads shown and for ten Southern roads operating in Kentucky as indicated in the footnote. The first six months of 1943 has been estimated, and I will explain the method of estimate in dis- [fol. 2670] cussing the following exhibit when it will be easy for me to make it clear.

You will not here that the year 1942 showed very favorable trend for the 1936-39 average, and in some cases the first six months of 1943 is better even than for the average for 1942 and in some cases there is a slight increase over the increased 1942 average, but we feel that since in all cases those are so slight that considering that these are six months figures, and anticipating that there will be an improvement as the year 1943 progresses, which we feel is perfectly logical to expect, that the six months figures for 1943 compare favorably with 1942.

Exhibit 14 shows the passenger service operating ratios for the years 1936 through 1939 and estimates for the first months of 1943. There, again, there is a remarkable improvement over the preceding years. That is even true as to the first six months of '43 as against '42.

Now, Exhibit No. 15 is submitted to explain the method by which we estimated what the passenger service operating ratio had been for the first six months of 1943. As indicated in the exhibit, we obtained an operating ratio of 61 for ten railroads which are not listed here, but are the same ten as shown on a previous exhibit, and the first six months of 1943 this operating ratio for the passenger service was 61.

The appendix identified as Exhibit 16 explains how the [fol. 2671] revenues and expenses were allocated to the passenger service. The method is explained, I think, quite clearly in this appendix.

There is just one thing which should be changed here, and that is in this formula where we have shown what "K" represents—it should read:

"K = The 1942 ratio of Rp — (Pr. plus Mr plus Er) to Or."

As indicated in the text of this appendix, we found by an examination of the carriers' accounts and their allocations of revenues over past years according to the rules prescribed by the Interstate Commerce Commission that to all intents and purposes, practically all of the passenger revenue, ma-le revenue and express revenue were assigned to the passenger service. In allocating all other revenues excepting freight revenues, we assumed that the proportion allocated to the passenger service in 1943 would approximate the proportion in 1942, and in that category when we made the assumption is a relatively small amount of total revenue assigned to passenger service in any event.

Now, expenses were derived by the formula indicated here, K times the total operating expenses, and K here is derived as indicated by using the least squares regression equation based on the relationship between the ratio of passenger expenses to railway operating expenses with the ratio of passenger car miles to total transportation car miles.

[fol. 2672] And this is not as complicated as it sounds. We put it in those terms so if the carriers choose to have any of their statisticians check it, they will have an exact term what we mean and can check it by the rules.

Our justification for using this method is that we have found that there is a very rigid relationship between the ratio of passenger expenses to total operating expenses and as compared with the ratio between passenger car miles and total transportation car miles.

The supporting data for that is shown in these graphs where we took—we found by scattered diagrams that there was a straight line relationship between these two series, and the equations for each line are shown on the graphs.

There is a very high degree of correlation for each one of these as shown by the fact that the ten southern roads shown in this appendix and in the graphs, that the coefficient of correlation was .99, and the standard area of estimate was .18.

For the CNO&TP Railway, the coefficient of correlation was .87, and the standard area of estimate is .47;

For the C&O, the coefficient of correlation was .903, and the standard area of estimate .21;

For the Illinois Central Railroad and the Y&MV Railway, the coefficient of correlation is .90, and the standard area of estimate is .63;

[fol. 2673] For the Southern Railway Company, the coefficient of correlation is .93, and the standard area of estimate is .62;

For the L&N Railroad, the coefficient of correlation is .96 and the standard area of estimate .28.

Those are some, or almost the best correlation which I have ever seen in the course of my dealing with railroad statistics, and those measurements of relationship indicate that by basing your 1943 relationship upon the method as shown here, there would be a very very slight chance for error.

Q. In other words, this Exhibit 16 is not only an explanation of the method used, but also the extent of its accuracy, is that correct?

A. Yes, sir.

Q. And the extent of accuracy shows about what percent of possible error?

A. About one half of 1 per cent.

Q. Will you go ahead and explain that?

A. That is explained in those figures which I gave in the coefficient of correlation and standard area of estimate, and that is the reason those are submitted in the testimony.

Exhibit No. 17 is submitted as valuation data for the roads shown. We don't propose to analyze it or do anything with it at this time.

Mr. Miller: Mr. Examiner, that is all I have for the wit-
[fol. 2674] ness. I offer these exhibits, 12 to 17, as evidence.

Mr. Oliver: Mr. Examiner, I object to the introduction of Exhibit 17, because it shows on its face that the figures in Column 1 are taken from the ICC Statement No. 4142, which is not an official publication of the Interstate Commerce Commission, but as I understand it, is a statement put out by one section or one bureau of the Commission without the stamp of approval of the Commission itself, and it is the same statement which was excluded by Commissioner Aitchison in Ex Parte 148 proceeding for that reason, that it was not an official publication of the Commission, but a statement of opinion by one section or bureau of the Commission and didn't bear the stamp of approval, which would carry the approval of the Commission.

Examiner Stiles: Your objection, I take it, is that there is no one present who can stand cross examination on the exhibit?

Mr. Oliver: Yes, sir, and it goes to that too.

Mr. Miller: Mr. Examiner, this exhibit was prepared to show as best we could from the sources which were available to us, rate making bases; admittedly, it is the opinion of the Bureau of Valuation, and it is offered only for that reason.

Examiner Stiles: Is the witness able to stand cross examination on the data shown in it? I take it not.

[fol. 2675] Mr. Miller: I will ask her to what extent she is.

The Witness: I had nothing to do with the preparation of the figures: I took them from the pamphlet or document in which they are printed; it says that the property values shown are those recommended by the Bureau of Valuation for the purpose of these calculations as the rate-making values as of January 1, 1940. Although their use for such a purpose has been approved—although they have not been approved or adopted by the Commission, they are recommended by the Bureau of Valuation.

Examiner Stiles: They are recommended by the Bureau of Valuation?

The Witness: Yes, sir, they are recommended by the Bureau of Valuation, and because we had no other figures prepared by the Bureau of Valuation for a recent year, that is just taken as an indication.

Examiner Stiles: Exhibit 12 through 16, both inclusive, are received in evidence.

(Exhibits 12 thru 16, inclusive, Witness Whitnack, received in evidence.)

Examiner Stiles: The objection to Exhibit 17 is sustained, and that exhibit is not received in evidence.

Mr. Miller: Mr. Examiner, may I have permission to file at a later time as a later filed exhibit within ten days, Exhibit 17, excluding Column No. 1, to which objection was [fol. 2676] taken?

Mr. Oliver: May we go off the record?

Examiner Stiles: Off the record.

(Discussion outside the record.)

Examiner Stiles: On the record.

Mr. Miller: Mr. Examiner, in view of the action taken upon the respondents' objections to Exhibit 17, I will withdraw Column No. 1 to that exhibit, which is the rate making values as of January 1, 1940, estimated by the Bureau of Valuation, and in view of the request made by respondents off the record, I will ask the witness to please explain the contents of the other five columns of the exhibit, that is Exhibit 17.

The Witness: On Exhibit 17, Columns 2 and 3 are taken from the preliminary abstract of railway statistics for the years shown and refer to Schedule 211-N investment in railway property used in transportation service.

By Mr. Miller:

Q. Do they include the figures in Columns 5 and 6?

A. No, these figures in Columns 2 and 3 include whatever depreciation and amortization our defense projects were cut down in those years, but they do not include cash and materials and supplies.

Column 4 corresponds to investment in transportation property accounts 701, 702, 702 ½ on the comparative gen- [fol. 2677] eral balance sheet of the companies in their annual reports to the Interstate Commerce Commission; accrued depreciation, and accrued amortization of defense projects are also taken from the balance sheets in the annual reports, and includes Accounts 775, 775½, 776, 776½ and 777. I think that covers that. Cash, materials and supplies are the two accounts shown, respectively, as 708 and 716 in the general balance sheet.

Mr. Oliver: Mr. Examiner, with the elimination of Column 1 by counsel for the Office of Price Administration, and the explanation made of the remaining figures in Exhibit 17, I withdraw any objection to its receipt at this time.

Examiner Stiles: Exhibit 17 as corrected by the elimination of Column 1 is received in evidence.

(Exhibit 17, Witness Whitnack, received in evidence.)

Mr. Miller: Just one further statement. Is Exhibit 17 stated in thousands of dollars.

The Witness: Yes, that should have been put on the heading of the exhibit—all dollar figures are in thousands.

Examiner Stiles: Any further questions?

Mr. Miller: No, the witness is available for cross examination.

Examiner Stiles: Any questions?

Mr. Oliver: No questions in view of the explanation that has been made of Exhibit 17.

[fol. 2678] Examiner Stiles: You are excused.

(Witness excused.)

Examiner Stiles: Is there any further evidence in opposition to the petition?

(No response.)

Examiner Stiles: Any rebuttal?

Mr. Oliver: No rebuttal, Mr. Examiner.

Examiner Stiles: Suspend the record.

(Discussion ouside the record.)

Examiner Stiles: Resume the record.

Mr. Marks: Mr. Examiner, if it is in order, I would like to say that by agreement of counsel, we would like to have a proposed report in this case, and I understand that counsel for the applicants is agreeable to brief being filed November 1.

Examiner Stiles: State on the record why you ask such an extension of time.

Mr. Marks: Well, it falls to my lot to wield the laboring oar in writing this brief, and I anticipate being in Chicago in a series of coal rate hearings from the Midwestern field to Northern Illinois beginning September 23. We have

already had two hearings in those cases extending over a period of more than two weeks, and the carriers are not yet through. It looks like that we will be in Chicago for two to three weeks beginning September 23, and by the time we get back, we rather expect to have a further hearing in [fols. 2679-2694] Western Kentucky coal, from Western Kentucky to Chicago, and it will be a difficult problem for us to even get started on this brief before sometime in the middle of October, but we hope to be able to complete it and get it filed by November 1.

Examiner Stiles: Briefs will be due on November 1, 1943. All briefs are due on the same day. A proposed report will be issued.

The hearing is closed.

(Whereupon, at 12:40 o'clock p. m. Thursday, September 9, 1943, the hearing in the above-entitled matter was closed.)

[fol. 2695]

EXHIBIT No. 3

Kentucky Passenger Fares

I. C. C. Docket No. 29000—Witness: Aiken

Southern Railway System

Examples of possible reductions of *Interstate* fares for tickets good for transportation in coaches only by purchasing to the point nearest the State Line at which trains are regularly scheduled to stop and rebuying therefrom to *Interstate* destinations.

Item				
1.	Burnside, Ky. to Cincinnati, Ohio	(2 2¢)		$3 81
	Burnside, Ky. to Ludlow, Ky.	(1 65¢)	$0 75	
	Ludlow, Ky. to Cincinnati, Ohio	(2 2¢)	0 18	2 93
	Saving			0 88
2.	Burnside, Ky. to Indianapolis, Ind.	(2 2¢)		5 82
	Burnside, Ky. to Louisville, Ky.	(1 65¢)	2 55	
	Louisville, Ky. to Indianapolis, Ind.	(2 2¢)	2 70	5 25
	Saving			0 57
3.	Cincinnati, Ohio to Chattanooga, Tenn.	(2 2¢)		7 55
	Cincinnati, Ohio to Ludlow, Ky.	(2 2¢)	0 18	
	Ludlow, Ky. to Pine Knot, Ky.	(1 65¢)	3 25	
	Pine Knot, Ky. to Chattanooga, Tenn.	(2 2¢)	3 12	6 55
	Saving			1 00
4.	Danville, Ky. to Cincinnati, Ohio	(2 2¢)		2 71
	Danville, Ky. to Ludlow, Ky.	(1 65¢)	1 95	
	Ludlow, Ky. to Cincinnati, Ohio	(2 2¢)	0 18	2 13
	Saving			0 58
5.	Danville, Ky. to Chattanooga, Tenn.	(2 2¢)		4 88
	Danville, Ky. to Pine Knot, Ky.	(1 65¢)	1 30	
	Pine Knot, Ky. to Chattanooga, Tenn.	(2 2¢)	3 12	4 42
	Saving			0 46

6.	Danville, Ky. to St. Louis, Mo.	(2.2¢)		8.32
	Danville, Ky. to Louisville, Ky.	(1.65¢)	1.60	
	Louisville, Ky. to St. Louis, Mo.	(2.2¢)	6.27	7.87
	Saving			0.45
7.	Georgetown, Ky. to Chattanooga, Tenn.	(2.2¢)		5.90
	Georgetown, Ky. to Pine Knot, Ky.	(1.65¢)	2.15	
	Pine Knot, Ky. to Chattanooga, Tenn.	(2.2¢)	3.12	5.27
	Saving			0.63
8.	Georgetown, Ky. to Birmingham, Ala.	(2.2¢)		9.09
	Georgetown, Ky. to Pine Knot, Ky.	(1.65¢)	2.15	
	Pine Knot, Ky. to Birmingham, Ala.	(2.2¢)	6.35	8.50
	Saving			0.59

[fol. 2696]

Southern Railway System

Examples of possible reductions of *Interstate* fares for tickets good for transportation in coaches only by purchasing to the point nearest the State Line at which trains are regularly scheduled to stop and rebuying therefrom to *Interstate* destinations.

Item				
9.	Georgetown, Ky. to Detroit, Mich.	(2.2¢)		$7.25
	Georgetown, Ky. to Ludlow, Ky.	(1.65¢)	$1.15	
	Ludlow, Ky. to Detroit, Mich.	(2.2¢)	5.74	6.89
	Saving			0.36
10.	Junction City, Ky. to Chicago, Ill.	(2.2¢)		8.76
	Junction City, Ky. to Louisville, Ky.	(1.65¢)	1.70	
	Louisville, Ky. to Chicago, Ill.	(2.2¢)	6.77	8.47
	Saving			0.29
11.	Junction City, Ky. to Cincinnati, Ohio	(2.2¢)		2.79
	Junction City, Ky. to Ludlow, Ky.	(1.65¢)	2.00	
	Ludlow, Ky. to Cincinnati, Ohio	(2.2¢)	0.18	2.18
	Saving			0.61
12.	Junction City, Ky. to New Orleans, La.	(2.2¢)		15.84
	Junction City, Ky. to Pine Knot, Ky.	(1.65¢)	1.30	
	Pine Knot, Ky. to New Orleans, La.	(2.2¢)	14.19	15.49
	Saving			0.35
13.	Lawrenceburg, Ky. to Chattanooga, Tenn.	(2.2¢)		5.54
	Lawrenceburg, Ky. to Pine Knot, Ky.	(1.65¢)	1.95	
	Pine Knot, Ky. to Chattanooga, Tenn.	(2.2¢)	3.12	5.07
	Saving			0.47
14.	Lexington, Ky. to Cincinnati, Ohio	(2.2¢)		1.91
	Lexington, Ky. to Ludlow, Ky.	(1.65¢)	1.30	
	Ludlow, Ky. to Cincinnati, Ohio	(2.2¢)	0.18	1.48
	Saving			0.43
15.	Lexington, Ky. to Chattanooga, Tenn.	(2.2¢)		5.65
	Lexington, Ky. to Pine Knot, Ky.	(1.65¢)	2.00	
	Pine Knot, Ky. to Chattanooga, Tenn.	(2.2¢)	3.12	5.12
	Saving			0.53
16.	Lexington, Ky. to Atlanta, Ga.	(2.2¢)		8.65
	Lexington, Ky. to Pine Knot, Ky.	(1.65¢)	2.00	
	Pine Knot, Ky. to Atlanta, Ga.	(2.2¢)	6.16	8.16
	Saving			0.49

[Vol. 2697]

Southern Railway System

Examples of possible reductions of *Interstate* fares for tickets good for transportation in coaches only by purchasing to the point nearest the State Line at which trains are regularly scheduled to stop and rebuying therefrom to *Interstate* destinations.

Item				
17	Louisville, Ky. to Chattanooga, Tenn.	(2 24)		$6 32
	Louisville, Ky. to Pine Knot, Ky.	(1 41½)	$3 60	
	Pine Knot, Ky. to Chattanooga, Tenn.	(2 24)	2 72	6 32
	Saving			0 75
18	Louisville, Ky. to Atlanta, Ga.	(2 24)		6 56
	Louisville, Ky. to Pine Knot, Ky.	(1 41½)	3 60	
	Pine Knot, Ky. to Atlanta, Ga.	(2 24)	4 56	8 16
	Saving			0 71
19	Louisville, Ky. to Jacksonville, Fla.	(2 24)		12 61
	Louisville, Ky. to Pine Knot, Ky.	(1 41½)	3 60	
	Pine Knot, Ky. to Jacksonville, Fla.	(2 24)	13 07	16 72
	Saving			0 72
20	Ludlow, Ky. to Chattanooga, Tenn.	(2 24)		7 37
	Ludlow, Ky. to Pine Knot, Ky.	(1 41½)	3 25	
	Pine Knot, Ky. to Chattanooga, Tenn.	(2 24)	3 72	6 97
	Saving			0 40
21	Nicholasville, Ky. to Chattanooga, Tenn.	(2 24)		7 36
	Nicholasville, Ky. to Pine Knot, Ky.	(1 41½)	3 79	
	Pine Knot, Ky. to Chattanooga, Tenn.	(2 24)	3 72	6 97
	Saving			0 39
22	Nicholasville, Ky. to Cincinnati, Ohio	(2 24)		7 14
	Nicholasville, Ky. to Ludlow, Ky.	(1 41½)	3 25	
	Ludlow, Ky. to Cincinnati, Ohio	(2 24)	3 50	6 75
	Saving			0 39
23	Shelbyville, Ky. to Chattanooga, Tenn.	(2 24)		6 89
	Shelbyville, Ky. to Pine Knot, Ky.	(1 41½)	2 82	
	Pine Knot, Ky. to Chattanooga, Tenn.	(2 24)	3 72	6 54
	Saving			0 35

[Vol. 2698]

Southern Railway System

Examples of possible reductions of *Interstate* fares for tickets good for transportation in coaches only by purchasing to the point nearest the State Line at which trains are regularly scheduled to stop and rebuying therefrom to *Interstate* destinations.

Item				
24	Shelbyville, Ky. to Knoxville, Tenn.	(2 24)		$5 40
	Shelbyville, Ky. to Pine Knot, Ky.	(1 41½)	$2 35	
	Pine Knot, Ky. to Knoxville, Tenn.	(2 24)	2 72	5 06
	Saving			0 34
25	Somerset, Ky. to Chicago, Ill.	(2 24)		8 00
	Somerset, Ky. to Louisville, Ky.	(1 41½)	3 25	
	Louisville, Ky. to Chicago, Ill.	(2 24)	4 75	8 00
	Saving			0 25
26	Somerset, Ky. to Detroit, Mich.	(2 24)		9 25
	Somerset, Ky. to Ludlow, Ky.	(1 41½)	3 25	
	Ludlow, Ky. to Detroit, Mich.	(2 24)	5 75	9 00
	Saving			0 25

27. Somerset, Ky. to St. Louis, Mo.	(2 24)			9 28
Somerset, Ky. to Louisville, Ky.	(1 65a)	2 35		
Louisville, Ky. to St. Louis, Mo.	(2 24)	6 27		9 62
Saving				0 66
28. Stearns, Ky. to Cincinnati, Ohio	(2 24)			4 26
Stearns, Ky. to Ludlow, Ky.	(1 65a)	3 15		
Ludlow, Ky. to Cincinnati, Ohio	(2 24)	0 18		3 33
Saving				1 02
29. Stearns, Ky. to Indianapolis, Ind.	(2 24)			6 24
Stearns, Ky. to Louisville, Ky.	(1 65a)	3 99		
Louisville, Ky. to Indianapolis, Ind.	(2 24)	2 79		1 69
Saving				0 84

[illegible]

Exhibit No. 4

Kentucky Passenger Cases

[illegible] Western Lines

Southern Railway System

Exhibit showing the fares paid for transportation paid at one-half one cent per mile for 19,733,807,173 passengers, also paid for 19,733,807,173 passengers traveling same distance between points in Kentucky

Item.		One Way Miles	One Way Cents Fare	Difference in Cents in Favor Intrastate Passengers
1. Lexington, Ky. to Cincinnati, Ohio	(1 [illegible])	76	1 90	
Lexington, Ky. to Somerset, Ky.	(1 65a)	80	1 20	30 [illegible]
Somerset, Ky. to Louisville, Conn.	(1 24)	101	2 30	
Somerset, Ky. to Lexington, Ky.	(1 65a)	111	1 67	1 71
Louisville, Ky. to Corbin, Conn.	(2 24)	99	2 19	
Louisville, Ky. to Somerville, Ky.	(1 65a)	99	1 64	1 41
2. Georgetown, Ky. to Hamilton, Ohio	(2 24)	99	2 24	
Georgetown, Ky. to Somerset, Ky.	(1 65a)	81	1 34	1 90
3. Lexington, Ky. to Middletown, Ohio	(2 24)	110	2 50	
Lexington, Ky. to Stamps, Ky.	(1 65a)	110	1 81	1 79
4. Shelbyville, Ky. to North Vernon, Ind.	(2 24)	80	1 81	
Shelbyville, Ky. to Somerset, Ky.	(1 65a)	87	1 44	1 71
5. Ludlow, Ky. to Cincinnati, Ohio	(2 24)	81	1 84	
Ludlow, Ky. to Sherwin Cliff, Ky.	(1 65a)	110	1 82	1 71
6. Ludlow, Ky. to Vernon, Ind.	(2 24)	106	2 41	
Ludlow, Ky. to Falmouth, Ky.	(1 65a)	101	1 67	1 74
7. Somerset Conn. Ky. to Somerset Conn.	(1 24)	80	1 81	
Somerset Conn. Ky. to Louisville, Ky.	(1 65a)	87	1 44	1 30
8. Shelbyville, Ky. to Frankfort, Ind.	(2 24)	30	1 81	
Shelbyville, Ky. to Carlisle, Ky.	(1 65a)	106	1 81	30
9. Winchester, Ky. to Columbus, Ohio	(2 24)	113	2 90	
Winchester, Ky. to Stanton, Ky.	(1 65a)	104	1 71	1 19
10. Winchester, Ky. to Cincinnati, Ohio	(2 24)	88	2 27	
Winchester, Ky. to Louisville, Ky.	(1 65a)	100	1 71	1 56
[illegible]				
11. Chamberlayne, Ky. to Louisville, Tenn.	(2 24)	91	1 19	
Chamberlayne, Ky. to Morehouse, Ky.	(1 65a)	103	2 30	0 89
12. Frankfort, Ky. to Indianapolis, Ind.	(2 24)	171	3 82	
Frankfort, Ky. to Bowling Green, Ky.	(1 65a)	172	2 80	1 02
13. Hamilton, Ky. to Nashville, Tenn.	(2 24)	186	3 23	
Hamilton, Ky. to Louisville, Ky.	(1 65a)	103	2 15	1 08
14. Louisville, Ky. to Nashville, Tenn.	(2 24)	187	4 11	
Louisville, Ky. to Richmond, Ky.	(1 65a)	189	3 20	0 91
15. Louisville, Ky. to South Bend, Ind.	(2 24)	208	4 11	
Louisville, Ky. to Frank, Ky.	(1 65a)	270	4 50	1 61

[illegible]

EXHIBIT No. 4

Kentucky Passenger Fares
I.C.C. Docket No. 29000—Witness: Aiken
Southern Railway System

Examples showing the fares paid for transportation good in coaches only by INTERSTATE passengers, also paid by INTRASTATE passengers traveling equal distance between points in Kentucky.

Item				
18.	Louisville, Ky. to Gallatin, Tenn.	(2.2¢)	159	3.52	
	Louisville, Ky. to Guthrie, Ky.	(1.65¢)	164	2.80	0.72
19.	Louisville, Ky. to Murfreesboro, Tenn.	(2.2¢)	214	4.84	
	Louisville, Ky. to Middlesboro, Ky.	(1.65¢)	217	3.65	1.19
20.	Lexington, Ky. to Columbus, Ohio	(2.2¢)	197	4.44	
	Lexington, Ky. to Owensboro, Ky.	(1.65¢)	199	3.35	1.09
21.	Lexington, Ky. to Richmond, Ind.	(2.2¢)	142	3.30	
	Lexington, Ky. to Hazard, Ky.	(1.65¢)	147	2.30	1.00
22.	Lexington, Ky. to Lima, Ohio	(2.2¢)	209	4.66	
	Lexington, Ky. to Lynch, Ky.	(1.65¢)	208	3.50	1.16
23.	Owensboro, Ky. to St. Louis, Mo.	(2.2¢)	207	4.91	
	Owensboro, Ky. to Winchester, Ky.	(1.65¢)	217	3.70	1.21
24.	Owensboro, Ky. to Nashville, Tenn.	(2.2¢)	175	3.89	
	Owensboro, Ky. to Frankfort, Ky.	(1.65¢)	170	2.90	0.99
25.	Bowling Green, Ky. to Chattanooga, Tenn.	(2.2¢)	225	4.99	
	Bowling Green, Ky. to Covington, Ky.	(1.65¢)	225	3.75	1.24

[fol. 2701]

EXHIBIT No. 5

Kentucky Passenger Fares
I.C.C. Docket No. 29000—Witness: Tucker

Illinois Central System

Examples of possible reductions on Interstate fares for round-trip COACH tickets by purchasing to the point near the state line at which trains are regularly scheduled to stop and rebuying therefrom to destinations beyond.

Example No. 1

	Round-Trip Coach Fare	Round-Trip Coach Fare
Paducah, Ky. to Cincinnati, Ohio (Interstate Fare)	.....	$13.80
Paducah, Ky. to Louisville, Ky. (Intrastate Fare)	$7.48	.....
Louisville, Ky. to Cincinnati, Ohio (Interstate Fare)	4.80	.....
Combination of Interstate and Intrastate Fares		12.28
Reduction		$1.52

Example No. 2

Louisville, Ky. to Memphis, Tenn. (Interstate Fare)	.....	$15.15
Louisville, Ky. to Fulton, Ky. (Intrastate Fare)	$8.97	.....
Fulton, Ky. to Memphis, Tenn. (Interstate Fare)	4.95	.....
Combination of Interstate & Intrastate Fares		13.92
Reduction		$1.23

Examples showing the round-trip coach fares paid for transportation by interstate passengers in comparison with round trip coach fares paid for transportation by intrastate passengers traveling approximately like distances between points in Kentucky.

Example A

	Distance Miles	Round Trip Coach Fare	Difference in favor of Intrastate Passenger
Fulton, Ky. to Granada, Miss.	221.6	$8.95	.....
Fulton, Ky. to Cecilia, Ky.	223.4	7.43	$1.52

Example B

Mayfield, Ky. to Memphis, Tenn.	144.9	5.75	.....
Cecilia, Ky. to Eddyville, Ky.	145.4	4.84	.91

[fol. 2702]

EXHIBIT No. 6
I. C. C. Docket No. 29000—Witness: Tassin

BEFORE THE
INTERSTATE COMMERCE COMMISSION
IN THE MATTER OF PASSENGER FARES AND CHARGES
FOR INTRASTATE TRAFFIC BETWEEN POINTS IN KENTUCKY
STATISTICAL FINDINGS AND DATA IN SUPPORT THEREOF

[fol. 2703]

Statistical Findings and Data in Support Thereof

1. Had increase sought in intrastate passenger fares and charges between points in Kentucky been in effect between December 1, 1942 and June 30, 1943, $306,951 additional would have been earned by the 7 railroads parties to the petition in this case. Raised to a year's basis that would amount to $526,200. For the 12 months ended Feb. 28, 1943, the amount would have been $426,586, and for the 12 months ended June 30, 1943, $495,755.

2. For many years past passenger operations of these railroads have been in the red. From 1936 to 1940, both inclusive, in a range from 21 to 26 millions of dollars, average deficit has been 24 millions. In 1941 there was a drop to 18 millions. In 1942 there was an income of 11 millions. The average deficit for the 7-year period (1936–42) was 18 millions. The 6-year cumulative deficit 1936 to 1941, both inclusive, was 136 millions, in order to equalize which between 12 and 13 years as good as 1942 will have to be anticipated.

3. Railroads of the Southern Region, in common with railroads of the country in general, are chronically in need of additional revenue. For example, for the average of 10 years (1921–30) Class I Railroads of Southern Region earned only 4.20% on their investment in railway property used in transportation service. For the succeeding 12 years (1931–42) the yield was but 2.48%, while for the 22-year period (1921–42) it was but 3.23%.

4. Specifically, for the 22-year period (1921–42) these 7 roads as a group averaged only 4.30% on their investment.

5. Weighting the return for each road in proportion to mileage operated, entire line in comparison with in the State of Kentucky, produces 3.97% and 4.31%, respectively.

6. This means that if a 5–3/4% return on investment is to be realized, revenues for the entire line should be increased by 8%, and as related to the State of Kentucky by 6%.

7. That the basis of measurement (investment in railway property used in transportation service) here utilized is conservative, is evidenced by the fact that 10% additional would have had to be raised in order to reproduce these properties as of January 1, 1940.

8. For the average year of 7 (1936–42) and for the 7 roads parties to this petition, the freight operating ratio was 59 as compared with the passenger operating ratio of 113.

9. Adding to railway operating expenses the net income deductions for railway tax accruals and operating rents we produce an outgo ratio for freight of 72 as compared with 127 for passenger.

[fol. 2704]

10. From 1936 to 1940, inclusive, passenger carrying cars on the average earned 16¢ per car mile. In 1941 that jumped to 20½¢, and 1942 to 38¢, the average for the 7-year period being 21¢.
11. The cars in baggage, mail, express and milk service, popularly known as head-end cars, in a range from 25 to 28¢, earned on the average 26¢. This is 5¢ a mile more than earned by the rear end or passenger-carrying cars.
12. For the average of 6 years (1937–42) passengers in coaches paid on the average 1.59¢ per mile, in a range from 1.44 to 1.69.
13. For the average of 6 years (1937–42) passengers in Pullman cars paid on the average 2.42¢ per mile, in a range from 2.29 to 2.57¢.
14. For the 6-year period (1937–42) passenger coaches earned on the average 30¢ per mile in a range from 21¢ to 52¢.
15. For the 6-year period (1937–42) Pullman cars earned 27¢ per mile in a range from 20 to 47¢.
16. The total of railway tax accruals for the year 1942 increased 394 percent over what it was in 1936.
17. Railway tax accruals assigned to passenger under rules prescribed by the Interstate Commerce Commission in 1942 were 246 percent in excess of what they were in 1936.
18. The general average rate of hourly compensation was 24 per cent greater in 1942 than it was in 1936.
19. For Southern District roads as represented by C&O, IC, L&N and Southern, the index of average unit prices of railway materials and supplies (including fuel) was 28% higher on December 1, 1942 than it was on October 1, 1936.
20. For the 5-year period ended with 1920 the railroads parties to this petition averaged 68 passengers per train.
21. For the 10-year period ended 1930 they averaged 50 passengers per train.
22. For the 10-year period ended 1940 they averaged 39 passengers per train.
23. Recapping, in comparison with 120 passengers per train in 1942, 63 in 1941, the average 1921 to 1940 was 46, and 1916 to 1940, 51.
24. For the 5-year period ended with 1920 these roads averaged 18 passengers per car.
25. For the 10-year period ended with 1930 they averaged 12 passengers per car.
26. For the 10-year period ended with 1490 they averaged 10 passengers per car.
27. Recapping, the 7 roads parties to this proceeding for the first quarter of 1943 averaged 29 passengers per car in comparison with 24 for the year 1942, and 15 for the year 1941, 10 for the decade ended 1940, 12 for the decade ended 1930, and 18 for the 5 years ended 1920.
28. For the 6-year period (1937–42) these roads averaged 19 passengers per coach.
29. For the 6-year period (1937–42) they averaged 11 passengers per Pullman car.

[fol. 2705] Loss in Passenger Revenue Reflected by What Would Have Accrued Had Increase Sought in Intrastate Fares Been in Effect in the State of Kentucky During the Periods Shown Below

Road	Loss in Intrastate Revenues		
	Year Ended 2/28/43	Year Ended 6/30/43	7 Months Ended 6/30/43
The Chesapeake and Ohio Railway Company	$31,371	$37,087	$23,580
The Cincinnati, New Orleans & Texas Pacific Railway Company	15,584	19,306	11,803
Gulf, Mobile and Ohio Railroad Company	1	.....	.....
Illinois Central Railroad Company	20,942	24,228	15,002
Louisville & Nashville Railroad Company	346,158	400,355	247,698
Nashville, Chattanooga & St. Louis Railway	2,070	2,248*	1,390*
Southern Railway Company	10,460	12,531	7,478
Total	$426,586	$495,755	$306,951
Annual approximation			$526,200

SOURCE: Furnished on request by Accounting Departmnet of each railroad.

* Months of May and June estimated.

[fol. 2706]

Net Railway Operating Income or Deficit—Passenger Only
(As Required to Be Computed by Interstate Commerce Commission and Annually Reported Thereto)
Class I Railroads Operating in State of Kentucky
(Petitioners in This Proceeding)

Roads	1936	1937	1938	1939	1940	1941	1942	Average
C & O	$5,435,603	$5,892,936	$6,445,475	$6,189,350	$6,229,343	$5,887,954	$1,562,533	$5,377,599
CNO & TP	686,431	413,027	709,206	908,079	804,385	423,651	I 615,097	475,669
G M & O	1,006,978	994,335	1,047,561	1,107,153	1,308,317	1,180,424	592,468	1,033,891
I C RR	5,605,522	2,952,394	3,641,717	3,864,562	4,604,410	4,377,460	I 130,959	3,559,391
L & N	5,429,064	5,887,764	6,556,946	6,404,436	6,815,661	4,915,654	I 2,069,686	4,848,548
NC & St. L	648,694	761,372	824,626	841,791	764,263	675,092	I 709,082	543,822
Southern	3,951,429	4,176,195	4,994,845	4,873,672	5,222,582	927,503	I 9,748,714	2,056,787
Total	$22,763,721	$21,078,023	$24,220,376	$24,189,043	$25,748,961	$18,387,738	$I 11,118,537	$17,895,617
Cumulative deficits, 1936–1941						$136,387,862		

Years like 1942 required to wipe out—over 12

I Denotes Income.

Source: Annual Reports to Interstate Commerce Commission.

Southern Region

Revenues, Expenses and Net Income
Railways of Class I—Years 1921–1942

Year	Investment in Railway Property used in transportation service *a*	Total Operating Revenues	Total Operating Expenses	Taxes	Net Railway Operating Income: Amount	Net Railway Operating Income: Rate of Return	Net Income
1921	$2,544,543,695	$684,727,318	$589,349,969	$30,058,104	$57,840,946	2.27%	$7,841,591
1922	2,591,156,704	711,489,119	554,924,589	37,636,117	109,666,782	4.23	55,791,992
1923	2,740,319,955	807,900,577	627,558,235	42,177,128	129,644,627	4.73	77,507,509
1924	2,848,043,577	787,949,317	594,875,149	44,982,899	142,445,074	5.00	86,311,303
1925	2,989,626,741	846,581,262	616,488,300	50,957,634	167,565,759	5.60	112,068,078
1926	3,155,883,365	874,464,159	646,031,708	53,857,054	163,046,381	5.17	105,154,742
1927	3,236,589,190	813,166,422	618,642,232	50,644,073	136,488,599	4.22	77,275,619
1928	3,292,527,033	771,814,281	582,088,993	50,940,833	133,545,258	4.06	72,234,499
1929	3,324,161,166	767,324,856	579,047,334	51,147,375	132,634,559	3.99	73,059,468
1930	3,338,881,112	641,628,178	503,008,762	42,974,495	88,405,628	2.65	30,860,679
Avg. 1921–30	3,006,173,253	770,704,548	591,201,527	45,537,572	126,128,361	4.20	69,810,548
1931	3,321,736,996	515,584,069	424,823,685	36,863,350	44,119,880	1.33	D 22,562,485
1932	3,300,356,863	377,781,440	312,379,830	31,784,693	25,802,843	0.78	D 48,626,465
1933	3,245,727,101	388,514,453	291,234,184	28,256,926	59,677,490	1.84	D 16,048,078
1934	3,214,398,995	408,242,449	315,267,500	27,034,974	54,520,803	1.70	D 19,228,469
1935	3,182,822,004	429,651,453	342,529,025	28,079,336	49,301,947	1.55	D 24,736,251
1936	3,174,468,831	500,904,542	371,241,330	37,018,915	80,146,408	2.52	10,743,969
1937	3,155,343,353	516,590,873	390,555,654	39,199,291	74,160,012	2.35	6,601,155
1938	3,173,336,647	471,305,776	357,486,929	42,056,626	60,204,023	1.90	D 9,734,450
1939	3,183,259,365	512,031,356	378,090,055	43,853,775	79,592,778	2.50	11,667,811
1940	3,184,435,186	545,276,358	404,502,838	48,623,247	81,939,906	2.57	15,726,381
1941	3,273,594,731	698,242,859	472,968,083	76,416,137	138,673,394	4.24	74,845,799
1942	3,338,644,861	1,052,924,537	622,964,370	194,186,597	214,151,928	6.41	153,250,208
Avg. 1931–42	$3,229,010,410	$534,754,180	$390,336,964	$52,781,156	$80,190,951	2.48	$10,991,594
Avg. 1921–42	$3,127,720,794	$642,004,348	$481,639,038	$49,488,617	$101,071,592	3.23	$37,727,482

D—Denotes Deficit. *a* includes allowance for working capital.

Source: Association of American Railroads—Bureau of Railway Economics.

[fol. 2708]

Average Annual Rate of Return—1921–1942, Inclusive
Class I Railroads Operating in State of Kentucky
(Petitioners in This Proceeding)

	Investment in Railway Property Used in Transportation Service, including Cash and Materials & Supplies	Net Railway Operating Income	Rate of Return
Chesapeake and Ohio	$521,451,860	$36,172,595	6.94
C N O & T P	77,391,113	4,259,705	5.50
Gulf, Mobile & Ohio	102,157,262	2,879,194	2.82
Illinois Central	586,724,446	19,770,778	3.37
Louisville & Nashville	469,700,458	17,700,721	3.77
Nashville, Chattanooga & St. Louis	99,179,924	2,445,499	2.49
Southern	612,860,440	22,888,182	3.73
Total	$2,469,465,503	$106,116,674	4.30

Source: Reports of Carriers to the Bureau of Railway Economics, Association of American Railroads, and to the Interstate Commerce Commission (beginning in 1936).

[fol. 2709]

Average Rates of Return, 1921–1942
Weighted in Proportion to Miles of Road Operated at Close of Year 1942
Class I Railroads Operating in State of Kentucky
(Petitioners in This Proceeding)

Road	Entire Line			In State of Kentucky		
	Miles	Return	Weighting	Miles	Return	Weighting
Chesapeake & Ohio	3,092	6.94	21,458	631	6.94	4,379
C N O & T P	337	5.50	1,854	198	5.50	1,089
G M & O	1,969	2.82	5,553	43	2.82	121
Ill. Central	4,841	3.37	15,927	641	3.37	2,109
L & N	4,745	3.77	17,889	1,800	3.77	6,786
N C & St. L	1,090	2.47	2,692	60	2.47	148
Southern	6,514	3.73	24,297	141	3.73	526
Total	22,588	3.97	89,670	3,514	4.31	15,158

Source: Mileage from annual reports to Interstate Commerce Commission; Return computed on basis data furnished by carriers to Bureau of Railway Economics, Association of American Railroads.

[fol. 2710]

Fact and Extent of Revenue Need
Average Year of 22 (1921–42, Inclusive)
Weighted in Proportion to Miles of Road Operated at Close of Year 1942
Railroads Operating in State of Kentucky
(Petitioners in This Proceeding)

Road	Entire Line			In State of Kentucky		
	Miles	Ratio	Weighted	Miles	Ratio	Weighted
Chesapeake & Ohio	3,092	95	293,740	631	95	59,945
C N O & T P	337	101	34,037	198	101	19,998
Gulf, Mobile & Ohio	1,969	113	222,497	43	113	4,859
Illinois Central	4,841	111	537,351	641	111	71,151
L & N	4,745	108	512,460	1,800	108	194,400
Nashville, Chatta. & St. L.	1,090	116	126,440	60	116	6,960
Southern Railway	6,514	110	716,540	141	110	15,510
Total	22,588	108	2,443,065	3,514	106	372,823

Source: Mileage from annual reports to Interstate Commerce Commission. Ratios are computed from detail of investment in railway property used in transportation service (including cash and material and supplies) and gross railway operating income and outgo furnished by carriers to Bureau of Railway Economics Association of American Railroads.

[fol. 2711]

Elements of Value of Property Used in Common Carrier Service as of January 1, 1940
Railroads Operating in State of Kentucky

Road	Basis A Production Cost	Basis B Reproduction Estimate	Current Appraisal		Capital Outlay	
			Lands	Working Capital	Basis A	Basis B
Ches. & Ohio	$517,780,465	$544,654,065	$18,283,905	$4,192,200	$540,256,570	$567,130,170
C N O & T P	91,057,859	98,087,537	4,901,295	699,600	96,658,754	103,688,432
G M & O	86,144,899	100,411,738	4,573,433	2,085,700	92,804,032	107,070,871
I C	574,215,160	622,217,409	73,060,187	5,643,700	652,919,047	700,921,296
L & N	500,444,673	569,677,300	25,805,045	8,377,500	534,627,218	603,859,845
N C & St. L	79,152,374	96,871,316	11,848,679	1,662,800	92,663,853	110,382,795
Southern	493,419,141	575,189,378	46,116,614	5,732,800	545,268,555	627,038,792
Total	$2,342,214,571	$2,607,108,743	$184,589,158	$28,394,300	$2,555,198,029	$2,820,092,201
Ratio	100	111			100	110

Source: Exhibit A–11, Ex Parte No. 148.

[fol. 2712]

Freight and Passenger Operating Ratios
Railroads Operating in State of Kentucky
(Petitioners in This Proceeding)

Roads	1936		1937		1938		1939		1940		1941		1942		Average	
	Frt.	Pass.	Frt.	Pass.	Frt.	Pass.	Frt.	Pass.	Frt.	Pass.	Frt.	Pass.	Frt.	Pass.	Frt.	Pass.
Ches. & Ohio	47	174	51	183	54	196	52	191	50	187	48	158	49	97	50	161
C N O & T P	53	116	55	106	59	117	55	118	54	117	53	96	51	62	52	110
G M & O	65	161	70	161	68	173	68	184	69	204	62	186	59	121	65	165
Ill. Cent.	67	128	69	112	66	115	67	118	69	121	66	115	64	93	66	112
L & N	65	130	68	139	67	143	65	142	65	144	58	119	56	72	62	115
NC & St. L	78	125	80	125	72	126	70	128	70	124	65	113	62	70	69	107
Southern	62	112	65	109	62	115	60	116	61	118	58	94	55	57	60	93
Total	59	128	63	130	62	131	61	132	60	136	57	115	56	74	59	113

Source: Annual Reports to Interstate Commerce Commission.

[fol. 2713]

Freight and Passenger Outgo Ratios
Class I Railroads Operating in Kentucky
(Petitioners in This Proceeding)

Roads	1936		1937		1938		1939		1940		1941		1942		Average	
	Frt.	Pass.	Frt.	Pass.	Frt.	Pass.	Frt.	Pass.	Frt.	Pass.	Frt.	Pass.	Frt.	Pass.	Frt.	Pass.
Ches. & Ohio	55	203	60	207	65	233	63	226	63	218	60	186	75	111	64	180
C N O & T P	60	113	63	112	65	138	62	148	64	139	68	116	82	58	68	115
G M & O	78	184	83	138	83	195	81	206	84	231	79	207	80	133	81	179
Ill. Cent.	77	139	79	120	76	126	76	128	77	132	76	126	80	100	78	122
L & N	70	150	74	153	74	164	72	163	73	164	71	136	84	93	75	135
N C & St. L	83	129	87	132	80	138	78	138	79	133	76	123	80	88	80	119
Southern	71	124	76	124	74	133	70	132	71	134	72	104	77	78	73	110
Total	67	143	72	138	72	150	70	149	71	151	70	128	79	90	72	127

Source: Reports of Carriers to the Interstate Commerce Commission.

[fol. 2714]

(102) Passenger, (104) Sleeping Car, (105) Parlor and Chair Car, (108) Other Passenger Train Revenue and (131) Dining and Buffet Revenue per Passenger Carrying Car Mile (Cents)
Class I Railroads Operating in State of Kentucky
(Petitioners in This Proceeding)

Road	1936	1937	1938	1939	1940	1941	1942	Average
Ches. & Ohio	14.63	15.37	13.94	13.76	14.46	18.13	34.12	18.78
C N O & T P	16.85	19.02	17.26	16.93	17.44	22.36	43.64	22.95
G M & O	13.15	14.31	12.24	11.01	10.73	14.57	27.19	14.82
I C	17.77	19.34	18.50	18.49	19.11	21.96	34.04	31.63
L & N	14.18	15.21	13.72	13.51	14.11	18.17	35.97	18.87
N C & St. L.	13.76	14.57	13.38	13.40	14.41	18.32	39.11	19.41
Southern Ry.	16.03	16.96	15.85	15.92	16.60	22.51	45.10	22.47
Total	15.77	16.89	15.67	15.55	16.18	20.50	38.34	20.70
Index	100	107	99	99	103	130	243	131

Source: Report of the Carriers to the Interstate Commerce Commission.

[fol. 2715]

(103) Baggage, (106) Mail, (107) Express and (109) Milk Revenue per Car Mile (Cents)
Class I Railroads Operating in State of Kentucky
(Petitioners in This Proceeding)

Road	1936	1937	1938	1939	1940	1941	1942	Average
Ches. & Ohio.	30.91	29.22	27.26	28.72	28.75	28.20	30.18	29.05
C N O & T P	26.90	27.66	25.85	26.86	26.01	25.22	26.57	26.27
G M & O	26.72	24.95	25.88	26.09	24.27	26.76	28.24	26.04
Ill. Cent	20.04	18.93	18.67	18.51	19.37	20.40	23.44	19.89
L & N	30.93	29.22	28.06	29.08	28.38	29.00	29.81	29.22
N C & St. L.	31.20	28.21	26.88	27.66	26.85	26.71	30.61	28.28
Southern	32.70	31.72	30.65	28.98	27.82	28.76	31.21	30.20
Total	27.54	26.20	25.46	25.35	25.27	25.96	28.44	26.34
Index	100	95	92	92	92	94	103	96

Source: Annual Reports to Interstate Commeree Commission.

[fol. 2716]

Revenue per Passenger Mile (Cents)—Coaches (Other than Commutation)
Class I Railroads Operating in Kentucky
(Petitioners in This Proceeding)

Roads	1937	1938	1939	1940	1941	1942	Average
C & O	1.688	1.701	1.730	1.520	1.552	1.771	1.689
C N O & T P	1.489	1.804	1.347	1.288	1.363	1.638	1.509
G M & O	1.546	1.683	1.547	1.548	1.620	1.978	1.673
I C*	1.543	1.738	1.593	1.565	1.645	1.923	1.669
L & N	1.496	1.788	1.403	1.395	1.437	1.578	1.520
N C & St. L.	1.529	1.839	1.480	1.489	1.464	1.540	1.535
Southern	1.447	1.824	1.345	1.291	1.423	1.600	1.507
Total	1.517	1.772	1.482	1.437	1.506	1.686	1.587

* Includes Y & M V.

Source: Form APT rendered to I.C.C.

[fol. 2717]

Revenue per Passenger Mile (Cents)—In Parlor and Sleeping Cars
Class I Railroads Operating in Kentucky
(Petitioners in This Proceeding)

Roads	1937	1938	1939	1940	1941	1942	Average
C & O	2.690	2.673	2.647	2.628	2.638	2.822	2.711
C N O & T P	2.368	2.439	2.471	1.769	2.436	2.691	2.396
G M & O	1.635	1.952	1.937	2.001	2.016	2.248	2.084
I C*	2.151	2.028	2.237	2.153	1.967	1.919	2.059
L & N	2.222	2.354	2.384	2.321	2.309	2.498	2.387
N C & St. L	2.411	2.495	2.478	2.377	2.405	2.663	2.528
Southern	2.328	2.416	2.407	2.353	2.435	2.880	2.555
Total	2.308	2.346	2.396	2.294	2.333	2.567	2.421

* Includes Y & M V.

Source: Form APT rendered to Interstate Commerce Commission.

[fol. 2718]

Revenue (Other than Commutation) Per Coach Mile (Cents)
Class I Railroads Operating in Kentucky
(Petitioners in This Proceeding)

Roads	1937	1938	1939	1940	1941	1942	Average
C & O	21.86	20.52	19.66	20.90	25.51	46.81	28.30
C N O & T P	25.20	19.91	20.18	22.76	26.34	51.85	30.50
G M & O	23.74	20.21	19.11	18.81	21.29	34.69	23.13
I C*	31.66	30.50	29.54	31.56	38.49	59.57	37.78
L & N	20.06	17.10	16.55	17.64	23.55	43.72	24.52
N C & St. L	23.35	18.80	18.73	21.75	29.28	50.18	29.46
Southern	20.37	19.32	19.14	20.95	29.99	57.89	30.72
Total	23.65	21.85	21.12	22.66	29.41	52.02	30.21

* Includes Y & M V.

Source: Form APT Rendered to I.C.C.

[fol. 2719]

Revenue Per Sleeping and Parlor Car Mile (Cents)
Class I Railroads Operating in Kentucky
(Petitioners in This Proceeding)

Road	1937	1938	1939	1940	1941	1942	Average
C & O	19.78	17.59	17.62	17.98	22.46	39.85	23.50
C N O & T P	24.69	25.03	24.73	24.65	32.61	65.40	33.29
G M & O	5.27	5.24	5.44	4.10	8.53	22.16	9.69
I C*	18.99	17.01	17.84	17.41	19.29	31.48	20.93
L & N	18.99	18.79	18.59	18.64	22.80	44.51	25.48
N C & St. L	16.82	18.00	17.48	17.22	20.98	52.29	25.44
Southern	27.74	26.95	26.52	26.09	32.84	63.15	35.68
Total	21.63	20.59	20.63	20.32	25.08	47.17	27.25

* Includes Y & M V.

Source: Form APT rendered to Interstate Commerce Commission.

[fol. 2720]

Total Railway Tax Accruals (Account 532)
Class I Railroads Operating in State of Kentucky
(Petitioners in This Proceeding)

Road	1936	1937	1938	1939	1940	1941	1942	Average
Ches. & Ohio	$13,318,039	$12,790,286	$12,596,458	$13,296,195	$18,241,188	$19,678,804	$49,998,352	$19,988,475
C N O & T P	1,330,937	1,436,302	1,595,488	1,813,272	2,227,001	3,755,992	8,896,710	3,007,957
G M & O	1,247,704	1,217,236	1,321,777	1,377,118	1,541,369	2,495,355	4,651,400	1,978,851
Ill. Cent.	7,494,947	6,572,372	8,060,846	8,497,663	8,342,027	11,601,379	21,505,173	10,296,344
L & N	6,626,087	7,716,721	7,114,734	8,135,700	10,304,935	18,212,127	48,370,589	15,211,556
NC & St. L	541,497	877,159	921,860	934,296	1,100,371	1,855,540	5,047,943	1,611,238
Southern	5,892,304	7,069,947	7,369,019	7,814,553	8,391,483	15,552,068	41,488,395	13,368,253
Total	$36,451,515	$37,680,023	$38,980,182	$41,868,797	$50,148,374	$73,151,265	$179,958,562	$65,462,674
Index	100	103	107	115	138	201	494	180

Source: Reports of the Carriers to the Interstate Commerce Commission.

[fol. 2721]

Railway Tax Accruals—Passenger
Class I Railroads Operating in State of Kentucky
(Petitioners in This Proceeding)

Roads	1936	1937	1938	1939	1940	1941	1942	Average
C & O	$1,020,880	$941,658	$1,253,632	$1,190,161	$1,198,848	$1,404,062	$1,562,342	$1,224,512
C N O & T P	161,241	209,746	251,383	401,248	267,335	277,263	1,186,214	393,490
G M & O	168,090	156,648	189,758	180,297	205,190	209,505	193,398	186,127
I C	1,829,159	1,500,473	1,925,736	1,922,171	1,910,324	2,280,864	2,407,348	1,968,011
L & N	1,307,787	1,498,428	1,661,076	1,561,801	1,635,869	1,716,511	5,450,546	2,118,860
N C & St. L	126,872	208,238	229,635	227,632	225,600	254,765	1,087,832	337,225
Southern	1,400,676	1,840,445	1,930,708	1,810,427	1,961,963	1,926,381	8,912,325	2,826,132
Total	$6,014,705	$6,355,636	$7,441,928	$7,293,737	$7,405,129	$8,069,351	$20,800,005	$9,054,357
Index	100	106	124	121	123	134	346	151

Source: Reports of the carriers to the Interstate Commerce Commission.

[fol. 2722]

Indices of Hourly Compensation (Cents)—All Employees—1936 = 100
Class I Railroads Operating in State of Kentucky
(Petitioners in This Proceeding)

Road	1936	1937	1938	1939	1940	1941	1942	Average
Ches. & Ohio	100	102	109	109	109	113	122	109
C N O & T P	100	103	109	110	111	117	127	112
G M & O	100	109	118	116	116	124	135	138
Ill. Cent.	100	103	109	108	108	112	121	109
L & N	100	103	116	109	109	114	124	110
N C & St. L	100	104	112	110	111	115	125	118
Southern	100	102	110	108	109	115	126	111
Average	100	103	110	109	109	116	124	111

Source: Annual Reports to Interstate Commerce Commission.

[fol. 2723]

Index of Average Unit Prices of Railway Material and Supplies, Including Fuel
October 1936 = 100
Four Southern District Roads*

	Oct. 1, 1936	Dec. 1, 1937	Dec. 1, 1938	Dec. 1, 1939	Dec. 1, 1940	Dec. 1, 1941	Dec. 1, 1942
Forest Products	100.0	105.0	94.4	106.4	126.1	139.1	165.2
Iron and Steel Products	100.0	121.1	112.0	113.5	115.1	120.5	120.8
Miscellaneous Products	100.0	106.1	105.5	108.2	104.9	113.6	116.5
Total (excl. Fuel)	100.0	113.4	106.5	110.5	114.3	122.3	128.7
Fuel (coal and oil)	100.0	95.6	110.8	110.7	110.1	123.9	126.3
Total (incl. Fuel)	100.0	108.0	107.8	110.6	113.1	122.8	128.0

* Includes: Chesapeake & Ohio
Illinois Central
Louisville & Nashville
Southern Railway

Source: Computed from data furnished by carriers to Bureau of Railway Economics, Association of American Railroads.

[fol. 2724]

Revenue Passenger Miles Per Train Mile
Class I Railroads Operating in Kentucky
(Petitioners in This Proceeding)

Roads	1916	1917	1918	1919	1920	Average
C & O	57.94	67.30	95.85	91.08	74.07	77.25
C N O & T P	58.34	86.02	111.43	82.62	85.39	84.00
G M & O	37.01*	36.56	41.55	42.59	44.25	40.57
I C	52.47	57.67	62.86	68.28	69.86	62.20
L & N	52.44	65.12	82.68	80.07	78.77	71.86
N C & St. L	45.87	55.52	90.51	74.57	68.52	70.44
Southern	49.28	66.57	91.19	76.31	68.71	70.66
Total	51.97	62.48	80.73	74.92	70.77	68.29

* Does not include Gulf, Mobile & Northern—not listed in Blue Book.

Source: I. C. C. Statistics of Railways in the United States.

[fol. 2725]

Revenue Passenger Miles per Trail Mile

Class I Railroads Operating in Kentucky
(Petitioners in This Proceeding)

Roads	1921	1922	1923	1924	1925	1926	1927	1928	1929	1930	Avg.
C & O	63.22	58.14	60.63	55.62	49.92	47.31	44.94	37.85	34.99	26.53	47.63
C N O & T P	68.15	70.41	82.50	71.18	69.95	62.80	58.16	55.14	50.48	36.25	62.00
G M & O	31.43	30.61	31.90	29.06	27.85	26.93	23.26	19.74	18.69	14.29	25.27
I C	56.23	55.38	57.81	53.62	53.84	54.23	53.92	51.64	52.50	47.89	53.69
L & N	60.43	55.53	62.26	57.22	53.80	50.89	47.71	42.96	39.13	31.09	50.06
N C & St. L	56.81	51.76	52.90	48.87	48.31	44.44	41.24	37.66	35.59	29.48	45.13
Southern	58.43	57.21	61.92	57.11	55.55	54.07	49.82	46.58	43.88	34.72	52.09
Average	57.51	55.18	59.39	54.62	59.98	51.34	48.54	44.81	42.93	35.41	50.28

Source: I.C.C. Statistics of Railways in the United States.

[fol. 2726]

Revenue Passenger Miles per Train Mile

Class I Railroads Operating in Kentucky
(Petitioners in This Proceeding)

Roads	1931	1932	1933	1934	1935	1936	1937	1938	1939	1940	Avg.
C & O	22.42	19.47	21.4	27.8	27.5	34.4	38.1	33.0	33.1	38.9	29.3
C N O & T P	29.73	26.10	39.9	45.3	44.4	59.0	63.3	48.2	54.7	62.4	46.9
G M & O	11.62	14.75	17.2	17.3	18.3	21.7	22.8	17.8	17.7	17.2	17.5
I C	43.78	42.79	54.6	55.0	47.0	53.1	60.5	55.0	57.3	61.8	52.7
L & N	25.44	23.77	26.6	34.0	38.4	44.3	47.3	35.3	40.7	44.7	35.6
N C & St. L	26.37	21.88	26.2	32.6	34.7	37.0	39.9	29.5	34.7	40.0	32.1
Southern	27.75	25.19	28.4	37.2	39.9	45.8	46.6	35.6	44.0	50.0	37.6
Total	30.10	27.78	32.9	38.7	38.7	44.8	48.3	39.4	43.9	48.6	39.0
1921–1940											45.5
1916–1940											50.5
1941											62.7
1942											119.7

Source: I.C.C. Statistics of Railways in the U. S.

[fol. 2727]

Revenue Passenger Miles per Train Mile

Class I Railroads Operating in Kentucky
(Petitioners in This Proceeding)

Road	1941	1942	Jan.-Apr. 1943	Yearly Average
C & O	51.6	101.8	142.1	88.5
C N O & T P	81.0	145.9	171.0	125.9
G M & O	20.6	42.8	66.4	35.7
I C*	66.9	105.1	140.4	94.2
L & N	60.5	121.8	192.2	109.6
N C & St. L	53.8	129.0	181.0	108.5
Southern	70.4	145.0	174.9	119.7
Total	62.7	119.7	162.5	103.3

* Includes Y & M V.

Source: Form OSD rendered to I.C.C.

[fol. 2728]

Revenue Passenger Miles per Car Mile

Class I Railroads Operating in Kentucky
(Petitioners in This Proceeding)

Roads	1916	1917	1918	1919	1920	Average
C & O	16.09	18.04	22.85	21.02	19.92	19.72
C N O & T P	14.02	17.95	23.57	17.62	18.10	18.22
G M & O	13.40*	16.66	15.91	16.50	16.87	15.93
I C	13.82	15.40	17.59	18.48	18.22	17.34
L & N	14.22	16.84	20.82	20.59	19.83	18.52
N C & St. L	12.91	14.98	22.36	19.60	17.37	17.47
Southern	14.48	17.37	21.33	18.48	17.25	17.98
Total	14.26	16.68	20.47	20.06	18.29	18.02

* Does not include, Gulf, Mobile & Northern—not listed in Blue Book.

Source: I.C.C. Statistics of Railways in the United States.

1297

[fol. 2729]

Revenue Passenger Miles per Car Mile

Class I Railroads Operating in Kentucky

Roads	1921	1922	1923	1924	1925	1926	1927	1928	1929	1930	Average
C & O	16.95	16.02	16.13	14.29	12.73	12.13	11.21	9.77	9.36	7.09	12.41
C N O & T P	12.88	13.78	15.53	13.61	12.31	10.91	10.03	9.72	9.11	6.91	11.31
G M & O	12.19	12.09	12.43	10.98	10.45	9.70	8.72	7.68	7.74	5.98	9.80
I C	14.93	14.59	14.89	13.57	13.25	12.85	13.33	12.82	12.85	11.98	13.45
L & N	15.69	14.28	15.41	14.07	12.76	11.86	11.30	10.33	9.34	7.48	12.17
N C & St. L	14.29	13.25	13.37	12.57	12.16	11.38	10.98	9.94	8.69	7.17	11.48
Southern	14.44	14.64	14.98	13.60	13.00	12.37	11.61	10.95	10.25	8.20	12.40
Average	14.86	14.49	15.02	13.63	12.84	12.17	11.77	11.01	10.46	8.79	12.47

Source: I.C.C. Statistics of Railways in the United States.

[fol. 2730]

Revenue Passenger Miles per Car Mile

Class I Railroads Operating in Kentucky
(Petitioners in This Proceeding)

Roads	1931	1932	1933	1934	1935	1936	1937	1938	1939	1940	Average
C & O	5.67	4.94	5.2	6.3	6.1	8.6	9.2	8.2	8.1	9.2	7.1
C N O & T P	5.81	5.31	8.1	8.5	8.9	10.5	11.2	8.9	10.2	11.1	8.8
G M & O	5.01	6.11	7.6	7.3	7.9	11.6	11.8	8.9	8.7	8.3	8.1
I C	11.42	10.97	13.2	13.2	11.6	12.4	13.7	12.7	13.1	13.6	12.6
L & N	6.15	5.92	6.7	8.3	9.1	10.1	10.4	8.1	9.2	9.7	8.3
N C & St. L	6.35	5.87	6.6	8.0	8.6	9.8	10.1	7.9	8.9	9.8	8.2
Southern	6.69	5.86	7.1	9.0	9.4	11.2	11.1	8.9	10.3	11.1	9.0
Total	7.57	7.09	8.3	9.4	9.4	10.9	11.4	9.6	10.4	11.1	9.5
1921–1940	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	11.2
1916–1940	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	13.1
1941	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	14.8
1942	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	23.9

Source: I. C. C. Statistics of Railways in the United States.

[fol. 2731]

Revenue Passenger Miles per Car Mile

Class I Railroads Operating in Kentucky
(Petitioners in This Proceeding)

Roads	1941	1942	Jan.–Apr. 1943	Yearly Average
C & O	11.1	19.1	24.4	17.2
C N O & T P	15.7	27.6	33.8	24.2
G M & O	10.1	15.4	19.0	14.1
*I C	16.6	22.7	25.7	20.9
L & N	13.3	22.8	32.6	21.4
N C & St. L	13.4	25.1	33.0	22.5
Southern	16.4	28.1	31.8	24.6
Total	14.8	23.9	29.4	21.6

* Includes Y & MV.

Source: Form OS–D rendered to I. C. C.

[fol. 2732]

Passenger Miles per Coach Mile

Class I Railroads Operating in Kentucky
(Petitioners in This Proceeding)

Roads	1937	1938	1939	1940	1941	1942	Average
C & O	12.95	11.66	11.36	13.75	16.44	26.44	16.76
C N O & T P	16.93	11.03	14.99	17.67	19.33	31.65	20.22
G M & O	15.35	12.01	12.35	12.15	13.14	17.49	13.83
*I C	20.52	17.55	18.55	20.17	23.39	30.98	22.23
L & N	13.41	9.56	11.79	12.64	16.39	27.71	16.13
N C & St. L	15.27	10.22	12.66	14.60	19.99	32.59	19.19
Southern	14.08	10.59	14.23	16.23	21.07	36.19	20.38
Total	15.60	12.33	14.25	15.77	19.53	30.85	19.04

* Includes Y & MV.

Source: Form APT rendered to I. C. C.

[fol. 2733]

Passenger Miles Per Sleeping and Parlor Car Mile

Class I Railroads Operating in Kentucky
(Petitioners in This Proceeding)

Roads	1937	1938	1939	1940	1941	1942	Average
C & O	7.35	6.58	6.66	6.84	8.52	14.12	8.67
C N O & T P	10.43	10.26	10.00	13.94	13.39	24.30	13.89
G M & O	3.22	2.68	2.81	2.05	4.23	9.86	4.65
*Ill. Cent.	8.83	8.39	7.98	8.08	9.81	16.41	10.17
L & N	8.55	7.98	7.80	8.03	9.87	17.82	10.68
N C & St. L	6.98	7.22	7.05	7.24	8.72	19.63	10.07
Southern	11.92	11.16	11.02	11.09	13.49	21.93	13.96
Total	9.37	8.78	8.61	8.91	10.75	18.38	11.26

* Includes Y & MV.

Source: APT Reports rendered to ICC.

[fol. 2734]

EXHIBIT No. 7
I. C. C. Docket 29000—Witness: J. E. Marks
Ky. R. R. Commission

Statement Showing Comparison of Present and Proposed Rail Coach Fares between Representative Points in Kentucky with Corresponding Bus Fares
(Federal Tax of 10 per cent not included)

Between	And	One Way			Round Trip		
			Rail			Rail	
		Bus	Pres.	Pro.	Bus	Pres.	Pro.
Louisville	Paducah	$3.50	$5.01	$5.01	$6.30	$7.48	$9.05
Louisville	Mayfield	4.05	5.50	5.50	7.30	8.25	9.90
Louisville	Elizabethtown	.85	.72	.95	1.55	1.30	1.75
Louisville	Bowling Green	1.95	1.95	2.53	3.55	3.55	4.60
Louisville	Shelbyville	.55	.61	.77	1.00	1.10	1.40
Louisville	Frankfort	.99	.99	1.32	1.65	1.80	2.40
Louisville	Lexington	1.40	1.45	1.87	2.55	2.65	3.40
Louisville	Winchester	1.55	1.75	2.27	2.80	3.15	4.10
Louisville	Lawrenceburg	.95	1.10	1.39	1.75	2.00	2.55
Louisville	Harrodsburg	1.25	1.45	1.87	2.25	2.65	3.40
Louisville	Danville	1.40	1.60	2.05	2.55	2.90	3.70
Lexington	Williamstown	.80	.77	.95	1.45	1.40	1.75
Lexington	Danville	.65	.66	.81	1.20	1.20	1.50
Lexington	Somerset	1.30	1.30	1.76	2.35	2.35	3.20
Lexington	Stearns	1.75	1.85	2.46	3.15	3.35	4.45
Lexington	Richmond	.45	.66	.84	.85	1.20	1.55
Lexington	Corbin	1.65	1.80	2.35	3.00	3.25	4.25
Lexington	Harlan	2.60	3.10	4.03	4.70	5.60	7.30
Lexington	Winchester	.35	.33	.44	.65	.60	.80
Lexington	Jackson	1.55	1.55	2.27	2.80	2.80	4.10
Lexington	Hazard	2.20	2.30	3.23	4.00	4.15	5.85
Winchester	Frankfort	.85	.83	1.06	1.55	1.55	2.15
Total		$32.50	$37.28	$45.73	$58.95	$64.28	$83.15
Ratio to present bus Fares		100.0%	114.7%	140.7%	100.0%	109.0%	141.0%

[fol. 2735]

EXHIBIT No. 8
Witness: J. E. Marks

Suspension Order No. 29
Increased Passenger Fares and Charges Between Points in Kentucky
Hearing Before Kentucky Railroad Commission at Frankfort, Kentucky, May 14, 1943

[fol. 2736]

Frankfort, Ky.—May 11, 1943

Table I—Average Miles of Road Operated by Class I Railroads in Kentucky in 1942.
(Note—Does not include B. & O., C. I. & L., Clinchfield, N. Y. C., N. & W., and Penn. R. R.).

Table II—Passenger Revenues—Kentucky Intrastate—L. & N. and C. & O.—Years 1935 to 1942, inclusive.

The Following Statistics Cover Kentucky Intrastate and Interstate Traffic of the L. & N., I. C., C. & O., C. N. O. & T. P., and Southern Railway for the years 1935 to 1942, inclusive.

Table III —Passenger Revenues
Table IV —Passengers Carried
Table V —Total Passenger Miles
Table VI —Average Miles per Passenger
Table VII —Average Revenue per Passenger Mile
Table VIII —Average Revenue per Passenger
Table IX —Passenger Miles per Mile of Road
Table X —Car Miles—Passenger Coaches
Table XI —Car Miles—Sleeping and Parlor Cars
Table XII —Total Car Miles—Coaches, Sleeping and Parlor Cars
Table XIII —Average Passengers per Car Mile—All Types

[fol. 2737]

Table I—Average Miles of Road Operated in Kentucky during 1942 by Class I Railroads Shown Below

Carrier	Passenger Trains		Total Transportation	
	Miles	Per Cent of Total	Miles	Per Cent of Total
L. & N.	1673.77	51.33	1829.75	51.18
I. C.	563.73	17.29	649.56	18.18
C. & O.	607.27	18.62	637.60	17.83
C. N. O. & T. P.	197.93	6.07	197.93	5.54
Southern Ry.	97.74	2.99	139.39	3.90
Sub-Total	3140.44	96.30	3454.23	96.63
G. M. & O.	42.78	1.32	42.78	1.20
N. C. & St. L.	59.76	1.83	59.76	1.67
Tenn. Central	18.00*	.55	18.00*	.50
Sub-Total	120.54	3.70	120.54	3.37
Grand Total	3260.98	100.00	3574.77	100.00

*—Estimated.

Note—The L. & N., I. C., C. & O., and Southern Ry. have abandoned a substantial amount of mileage, and have discontinued passenger service on several branch lines, during recent year.

{fol. 2738}

Table II—Passenger Revenues—Kentucky Intrastate

Railroad	Year 1942	Year 1941	Year 1940	Year 1939	Year 1938	Year 1937	Year 1936	Year 1935
L. & N.	$967,966	$538,046	$499,074	$519,726	$562,348	$713,672	$733,479	*
C. & O.	356,394	192,428	158,566	146,987	181,543	227,983	218,740	*
Total	$1,324,360	$730,474	$657,640	$666,713	$743,891	$941,655	$952,219	

Table III—Passenger Revenues—Kentucky Intrastate and Interstate

L. & N.	$7,060,894	$3,212,787	$2,317,878	$2,200,241	$2,300,266	$2,726,035	$2,527,960	$2,189,320
I. C.	1,769,407	980,802	578,462	543,955	526,666	593,294	575,021	499,813
C. & O.	2,348,093	1,036,470	743,051	682,716	711,974	830,777	797,372	676,923
C. N. O. & T. P.	2,642,549	1,165,201	811,926	714,597	732,487	880,601	774,688	539,486
Southern	202,493	102,265	42,162	40,902	46,845	55,825	49,215	46,880
Total	$14,023,436	$6,497,525	$4,493,479	$4,182,411	$4,318,238	$5,086,532	$4,724,256	$3,952,422

*—Not shown in reports.

[fol. 2739]

Table IV—Passengers Carried—Kentucky Intrastate and Interstate

Railroad	Year 1942	Year 1941	Year 1940	Year 1939	Year 1938	Year 1937	Year 1936	Year 1935
L. & N.	3,124,077	1,902,098	1,658,499	1,706,810	1,594,814	2,218,894	2,292,652	2,129,453
I. C.	1,151,095	789,388	479,607	436,475	418,348	520,337	538,488	448,822
C. & O.	1,342,580	723,737	552,920	444,853	513,178	759,613	554,870	419,658
C. N. O. & T. P.	846,376	420,169	315,179	280,152	249,381	345,596	333,579	260,179
Southern	169,476	95,986	59,404	56,795	55,718	78,711	81,731	80,477
Total	6,633,604	3,931,378	3,065,609	2,925,085	2,831,439	3,923,151	3,801,320	3,338,589

Table V—Total Passenger Miles (Thousands)—Kentucky Intrastate and Interstate

L. & N.	380,850	188,159	135,673	127,048	112,660	157,634	150,978	130,277
I. C.	87,607	57,292	33,110	29,871	26,367	31,027	32,033	27,741
C. & O.	114,525	53,472	38,532	32,136	32,566	39,488	35,445	29,139
C. N. O. & T. P.	130,998	64,786	46,019	39,011	34,383	47,729	43,837	30,705
Southern	9,929	5,799	2,720	2,528	2,373	3,377	3,077	2,858
Total	723,909	369,508	256,054	230,594	208,349	279,255	265,370	220,720

[fol. 2740]

Table VI—Average Mile per Passenger—Kentucky Intrastate and Interstate

Railroad	Year 1942	Year 1941	Year 1940	Year 1939	Year 1938	Year 1937	Year 1936	Year 1935
L. & N.	121.91	98.92	81.80	74.44	70.64	71.04	65.86	*
I. C.	76.11	72.58	69.04	68.44	63.03	59.63	59.49	*
C. & O.	85.30	73.88	69.69	72.24	63.46	51.98	63.88	*
C. N. O. & T. P.	154.77	155.66	146.01	139.25	137.87	138.11	131.42	*
Southern	58.59	60.41	51.28	44.52	42.58	42.90	37.65	*

Table VII—Average Revenue per Passenger/Mile

	(Cents)	(Cents)	(Cents)	(Cents)	(Cents)	(Cents)	(Cents)	
L. & N.	1.854	1.707	1.708	1.732	2.418	1.729	1.674	*
I. C.	2.020	1.712	1.747	1.821	1.997	1.912	1.795	*
C. & O.	2.050	1.938	1.928	2.124	2.176	2.104	2.250	*
C. N. O. & T. P.	2.017	1.799	1.764	1.832	2.130	1.845	1.767	*
Southern	2.039	1.764	1.550	1.618	1.974	1.653	1.599	*

*—Not shown in reports.

[fol. 2741]

Table VIII—Average Revenue per Passenger

Railroad	Year 1942	Year 1941	Year 1940	Year 1939	Year 1938	Year 1937	Year 1936	Year 1935
L. & N.	$2.26	$1.69	$1.40	$1.29	$1.44	$1.23	$1.10	*
I. C.	1.54	1.24	1.21	1.25	1.26	1.14	1.07	*
C. & O.	1.75	1.43	1.34	1.53	1.38	1.09	1.44	*
C. N. O. & T. P.	3.12	2.77	2.58	2.55	2.94	2.55	2.32	*
Southern	1.19	1.07	.71	.72	.84	.71	.60	*

Table IX—Passenger Miles per Mile of Road

L. & N.	208,143	100,302	70,954	68,542	58,042	81,046	77,507	*
I. C.	134,872	87,821	50,756	45,809	40,440	47,406	48,388	*
C. & O.	179,619	83,700	59,439	49,367	49,986	60,610	54,908	*
C. N. O. & T. P.	661,838	327,319	232,504	197,095	173,741	241,057	221,401	*
Southern	71,233	41,602	17,430	25,190	15,113	20,910	19,038	*

*—Not shown in reports.

[fol. 2742]

Table X—Car Miles—Passenger Coaches

Railroad	Year 1942	Year 1941	Year 1940	Year 1939	Year 1938	Year 1937	Year 1936	Year 1935
L. & N.	10,543,287	8,589,468	8,175,700	7,925,867	7,765,704	8,543,827	7,965,952	8,244,532
I. C.	2,548,772	2,642,352	2,196,654	2,042,376	1,965,269	1,974,517	2,104,761	1,960,434
C. & O.	3,739,456	2,550,452	2,203,452	2,076,564	2,108,069	2,233,817	2,049,044	2,753,546
C. N. O. & T. P.	2,573,316	1,933,572	1,409,832	1,316,774	1,304,509	1,519,873	1,524,596	1,629,138
Southern	194,538	148,670	158,018	155,052	157,005	185,553	175,717	308,358
Total	19,599,369	15,864,514	14,143,656	13,516,633	13,300,556	14,457,587	13,820,070	14,896,008

Table XI—Car Miles—Sleeping and Parlor Cars

L. & N.	6,145,073	5,196,353	4,837,486	4,530,353	4,712,392	4,765,498	4,816,256	5,094,373
I. C.	1,994,404	1,562,929	1,276,144	1,214,968	1,244,890	1,219,387	1,293,093	1,429,294
C. & O.	2,505,945	2,154,944	1,968,749	1,868,917	1,843,473	1,847,157	1,906,483	2,129,133
C. N. O. & T. P.	1,925,532	1,950,938	1,855,157	1,672,281	1,717,464	1,810,721	1,745,169	1,602,059
Southern	247,060	138,012	83,708	82,107	83,892	80,174	113,538	151,092
Total	12,818,914	11,003,176	10,021,244	9,368,626	9,602,111	9,722,937	9,874,539	10,405,951

[fol. 2743]

Table XII—Total Car Miles—Coaches, Sleeping and Parlor Cars

Railroad	Year 1942	Year 1941	Year 1940	Year 1939	Year 1938	Year 1937	Year 1936	Year 1935
L. & N.	16,688,360	13,785,821	13,013,186	12,456,220	12,478,096	13,309,325	12,782,208	13,338,905
I. C.	4,543,176	4,295,281	3,472,798	3,257,344	3,210,159	3,193,904	3,397,854	3,389,728
C. & O.	6,245,401	4,705,396	4,172,201	3,945,481	3,951,542	4,080,974	3,955,527	4,882,679
C. N. O. & T. P.	4,498,848	3,884,510	3,264,989	2,989,055	3,021,973	3,330,594	3,269,765	3,231,197
Southern	441,598	286,682	241,726	237,159	240,897	265,727	289,255	459,450
Total	32,417,383	26,867,690	24,164,900	22,885,259	22,902,667	24,180,524	23,694,609	25,301,959

Table XIII—Average Passengers Per Car Mile

L. & N.	22.8	13.7	10.4	10.2	9.0	11.8	11.8	9.8
I. C.	19.3	13.6	9.5	9.2	8.2	9.7	9.4	8.2
C. & O.	18.3	11.1	9.2	8.1	8.2	9.7	8.9	6.0
C. N. O. & T. P.	29.1	16.7	14.1	13.0	11.3	14.3	13.4	9.5
Southern	22.5	20.2	11.2	10.6	9.8	12.3	10.6	6.2
Total	22.3	13.8	10.6	10.8	9.1	11.5	11.2	8.7

[fol. 2744]

EXHIBIT No. 9

Ky. R.R. Commission

I.C.C. Docket 29000—Witness: J. E. Marks

Kentucky Intrastate Fares

Various Railway Operating Statistics of Respondent Carriers

Years 1938–1942, inclusive, and First Six Months 1943

[fol. 2745]

Frankfort, Ky.—September 8, 1943

Table of Contents

Table No.	Sheet No.	Description
I	3	Average miles of road operated in 1942
II	4	Freight Revenues
III	5	Passenger Revenues
IV	6	Mail, Express, Milk and Baggage Revenues
V	7	Total Operating Revenues
VI	8	Total Operating Expenses
VII	9	Operating Ratio
VIII	10	Railway Tax Accruals
IX	11	Net Railway Operating Income

Authority: I.C.C. Statistical Statements 41200, 42200, 43200.

Association of American Railroads, Bureau of Railway Economics, June 1943 Mo. Report Ser. No. 406.

[fol. 2746]

Table I—Average Miles of Road Operated by Respondents in 1942

	System Mileage	Kentucky Mileage	Ratio Kentucky Mileage to Sysytem Mileage
C. & O.	3115	638	20.5%
C. N. O. & T. P.	337	198	58.8%
G. M. & O.	1969	43	2.1%
I. C.*	6445	650	10.1%
L. & N.	4777	1830	38.3%
N. C. & St. L.	1107	60	5.4%
Southern	6519	139	2.1%
Total	24269	3558	14.7%

*—Includes Y & M V R R

[fol. 2747]

Table II—Freight Revenues

	†First six months		Year	Year	Year	Year	Year
	1943	1942	1942	1941	1940	1939	1938
C. & O.	$85,367,570	$77,365,302	$163,970,200	$140,222,032	$124,488,512	$111,270,264	$99,290,194
C. N. O. & T. P.*	14,249,158	11,655,942	25,167,950	19,676,012	16,023,191	15,647,163	13,146,675
C. M. & O.	17,438,345	13,499,047	30,736,553	22,122,767	17,329,032	17,281,064	16,458,381
I. C.*	99,644,279	81,281,097	178,968,303	120,471,429	95,915,992	93,521,556	87,410,214
L. & N.	75,560,495	63,434,740	136,689,523	104,063,091	85,586,937	76,492,009	67,605,607
N. C. & St. L.	14,735,574	9,888,764	24,045,988	16,257,795	12,906,131	12,173,225	11,124,724
Southern	86,362,674	71,846,540	156,635,034	116,520,375	88,591,660	82,344,875	72,950,429
Total	$393,358,095	$328,971,432	$716,213,551	$539,333,501	$440,841,455	$408,730,156	$367,986,224
Increase over preceding period	19.6%	—	32.8%	22.3%	7.9%	11.0%	—
Increase over 1938	—	—	94.6%	46.6%	19.8%	11.0%	—

*—Includes Y & M V R R

†—Accounts 101 and 121.

[fol. 2748]

Table III—Passenger Revenues

	†First six months		Year	Year	Year	Year	Year
	1943	1942	1942	1941	1940	1939	1938
C. & O.	$9,134,516	$3,980,140	$11,493,584	$4,831,741	$3,371,350	$3,062,151	$3,094,824
C. N. O. & T. P.	3,087,940	1,453,504	4,206,668	1,859,009	1,268,543	1,110,893	1,132,095
G. M. & O.	1,282,510	466,511½	1,361,108	619,770	532,344	551,657	615,880
I. C.*	16,876,035	9,000,840	22,531,696	12,542,496	9,943,009	9,529,182	9,958,084
L. & N.	22,014,638	8,481,765	23,288,244	8,976,429	6,474,811	6,013,271	6,199,037
N. C. & St. L.	3,929,360	1,435,420	4,654,317	1,706,194	1,163,813	1,078,102	1,050,783
Southern	27,225,669	12,862,648	36,265,338	14,232,779	9,177,690	8,741,860	8,786,241
Total	$83,550,668	$37,617,828	$103,800,955	$44,768,418	$31,931,560	$30,087,116	$30,836,944
Increase over preceding period	122.1%	—	131.9%	40.2%	6.1%	−2.5%	—
Increase over 1938	—	—	236.6%	45.2%	3.5%	−2.5%	—

*—Includes Y & M V R R.

†—Accounts 102 and 122.

[fol. 2749]

Table IV—Mail, Express, Milk and Baggage Revenues

Mail and Express only

	1942	1941	Year 1941	Year 1940	Year 1939	Year 1938
C. & O.	$1,829,023	$1,541,183	$1,620,391	$1,559,883	$1,559,375	$1,463,355
C. N. O. & T. P.	773,562	677,293	695,304	651,380	637,011	589,242
G. M. & O.	358,101	421,829	440,931	429,495	458,509	444,785
I. C.*	5,281,368	4,630,737	4,769,195	4,410,634	4,563,108	4,444,117
L. & N.	4,579,906	3,863,535	3,958,119	3,694,129	3,712,159	3,598,039
N. C. & St. L.	1,276,445	1,081,025	1,110,882	1,040,953	1,029,571	994,521
Southern	6,338,807	5,527,432	5,617,406	5,342,515	5,327,491	5,138,867
Total	$20,437,212	$17,743,034	$18,212,228	$17,128,989	$17,287,224	$16,672,926
Increase over preceding period	15.2%	—	6.3%	−0.9%	3.7%	—
Increase over 1938	†22.6%	—	9.2%	2.8%	3.7%	—

*—Includes Y & M V R R.

†—Inclusion of milk and baggage should increase this to about 25.8%.

[fol. 2750]

Table V—Total Operating Revenues

	First six months		Year	Year	Year	Year	Year
	1943	1942	1942	1941	1940	1939	1938
C. & O.	$97,982,469	$64,160,380	$181,809,761	$150,237,334	$132,720,172	$118,722,054	$106,376,482
C. N. O. & T. P.	18,142,935	13,715,307	30,697,673	22,621,592	18,320,382	17,788,489	15,240,549
G. M. & O.	19,282,435	14,480,979	33,173,151	23,647,846	18,701,182	18,660,835	17,945,443
I. C.*	123,456,602	95,675,928	213,026,422	142,438,326	114,266,410	111,370,852	105,415,827
L. & N.	103,085,736	75,729,999	168,824,550	119,569,572	98,001,627	88,348,256	79,394,560
N. C. & St. L.	20,075,529	12,329,090	30,928,868	19,668,767	15,632,633	14,827,811	13,659,542
Southern	120,669,725	89,875,646	204,605,581	139,926,434	105,905,395	99,153,560	89,419,110
Total	$502,695,431	$365,967,329	$863,066,006	$618,109,871	$503,547,801	$468,871,857	$427,451,513
Increase over preceding period	37.4%	—	39.6%	22.7%	7.4%	9.7%	—
Increase over 1938	—	—	101.9%	44.6%	17.8%	9.7%	—

*—Includes Y & M V R R.

[fol. 2751]

Table VI—Total Operating Expenses

	First six months		Year	Year	Year	Year	Year
	1943	1942	1942	1941	1940	1939	1938
C. & O.	$52,945,248	$46,268,842	$95,415,056	$80,239,299	$74,088,009	$68,859,622	$64,446,020
C. N. O. & T. P.	9,365,427	8,074,513	16,291,054	13,078,386	11,252,494	10,924,351	10,052,948
G. M. & O.	11,748,019	9,372,253	20,674,982	16,126,523	14,298,790	13,862,745	13,425,925
I. C.*	79,833,644	61,875,885	139,481,368	101,729,066	85,966,279	81,646,703	76,624,579
L. & N.	56,701,677	47,017,579	99,028,658	78,076,815	72,057,365	64,989,535	61,008,799
N. C. & St. L.	12,140,613	8,985,543	19,662,787	14,128,156	12,149,893	11,648,855	10,947,877
Southern	63,305,903	54,364,885	113,746,787	88,547,313	72,870,180	68,009,468	63,593,000
Total	$286,040,531	$235,959,500	$504,300,642	$391,925,558	$342,683,010	$319,947,279	$300,099,148
Increase over preceding period	21.2%	—	28.7%	14.4%	7.1%	6.6%	—
Increase over 1938	—	—	68.0%	30.6%	14.1%	6.6%	—

*—Includes Y & M V R R.

[fol. 2752]

Table VII—Operating Ratio

	First six months		Year	Year	Year	Year	Year
	1943	1942	1942	1941	1940	1939	1938
C. & O.	54.0	72.1	52.5	53.4	55.8	58.0	60.6
C. N. O. & T. P.	51.6	58.9	53.1	57.8	61.4	61.4	66.0
G. M. & O.	60.9	64.7	62.3	68.2	76.5	74.3	74.8
I. C.*	64.7	64	65.5	71.4	75.2	73.3	72.7
L. & N.	55.1	62.1	58.7	65.3	73.5	73.6	76.8
N. C. & St. L.	60.5	72.9	63.6	71.8	77.7	78.6	80.1
Southern	52.5	60.5	55.6	63.3	68.8	68.6	71.1
Average	56.9	64.5	58.4	63.4	68.0	68.2	70.2

*—Includes Y & M V R R.

[fol. 2753]

Table VIII—Railway Tax Accruals

	Federal Income only		Year	Year	Year	Year	Year
	1942	1941	1942	1941	1940	1939	1938
C. & O.	$39,254,906	$9,337,414	$49,998,351	$19,678,805	$18,241,188	$13,296,195	$12,596,458
C. N. O. & T. P.	7,114,000	2,219,000	8,896,710	3,755,992	2,227,001	1,813,272	1,595,488
G. M. & O.	2,603,860	758,436	4,651,400	2,495,355	1,541,369	1,377,118	1,221,727
I. C.*	11,809,000	1,018,021	26,522,731	13,444,595	10,928,949	10,132,942	9,683,876
L. & N.	38,158,512	9,442,677	48,370,589	18,212,127	10,304,935	8,135,700	7,114,734
N. C. & St. L.	3,535,974	759,305	5,047,943	1,855,540	1,100,371	934,296	921,860
Southern	29,325,000	5,910,000	41,488,395	15,552,068	8,391,483	7,814,553	7,369,019
Total	$131,801,252	$29,444,853	$184,976,119	$74,994,482	$51,835,296	$43,504,076	$40,503,212
Increase over preceding period	347.6%	—	146.7%	46.1%	19.2%	7.4%	—
Increase over 1938	—	—	356.7%	85.1%	28.0%	7.4%	—

*—Includes Y & M V R R.

[fol. 2754]

Table IX—Net Railway Operating Income

	First six months		Year	Year	Year	Year	Year
	1943	1942	1942	1941	1940	1939	1938
C. & O.	$18,065,537	$15,184,068	$39,643,584	$51,559,186	$40,817,746	$36,354,138	$28,983,311
C. N. O. & T. P.	2,917,480	2,351,978	5,222,964	5,958,047	4,998,100	5,185,059	3,996,660
G. M. & O.	2,525,244	2,217,877	5,648,668	3,661,460	1,505,525	2,154,857	1,794,596
I. C.*	21,271,099	16,837,687	40,957,856	25,903,251	16,759,150	17,813,128	16,816,359
L. & N.	13,178,430	10,025,684	23,732,085	25,548,223	17,187,993	15,848,660	11,622,971
N. C. & St. L.	2,935,295	1,860,353	5,702,913	3,309,419	2,069,426	1,982,653	1,481,936
Southern	17,348,286	17,979,626	46,265,818	32,789,981	21,457,294	20,521,866	14,343,565
Total	$78,241,371	$66,457,303	$167,173,888	$148,729,567	$104,795,234	$99,860,361	$79,039,428
Increase over preceding period	17.7%	—	12.4%	41.9%	5.0%	26.3%	—
Increase over 1938	—	—	111.5%	88.2%	32.6%	26.3%	—

*—Includes Y & M V R R.

[fol. 2755]

EXHIBIT No. 10

I. C. C. Docket 29000—Witness: J. E. Marks

Ky. R. R. Commission

Summary of Property Investment and Operating Income Account (Partially Estimated) of Respondents for Years 1938–1943, Inclusive

Property Investment	Year 1943	Year 1942	Year 1941	Year 1940	Year 1939	Year 1938
Investment in Railway property, viz:						
C & O	$	$	$581,805,859	$570,281,766	$562,925,776	$557,781,074
C. N. O. & T. P.			83,154,409	83,342,509	82,918,367	83,177,117
G. M. & O.			80,459,497	80,229,410	99,368,743	101,536,374
*I. C.			683,660,503	684,641,830	668,100,150	681,224,732
L. & N.			470,911,426	457,713,854	455,178,454	456,038,321
N. C. & St. L.			95,853,705	93,513,209	93,424,332	94,657,732
Southern			611,510,178	600,479,985	598,260,852	600,479,985
Total	#$2,607,355,577	#$2,607,355,577	$2,607,355,577	$2,570,202,563	$2,560,176,674	$2,574,875,335
Cash, Materials and Supplies	@183,363,713	@151,290,193	@117,577,667	@102,804,903	@95,984,184	@90,029,744
Total	$2,790,719,290	$2,758,645,770	$2,724,933,244	$2,673,007,466	$2,656,160,858	$2,664,905,079

*—Includes Y & M B R R.

#—Estimated same as 1941.

@—Estimated 30 per cent of total operating expenses.

Authority: I. C. C. Statistical Statements 41200, 42200.

[fol. 2756]

Operating Income Account	Year 1943	Year 1942	Year 1941	Year 1940	Year 1939	Year 1938
Total operating revenues	*$1,185,852,792	$863,066,006	$618,109,871	$503,547,801	$468,871,857	$427,451,513
Total operating expenses	*611,212,378	504,300,642	391,925,558	342,683,010	319,947,279	300,099,148
Operating ratio—per cent	51.5	58.4	63.4	68.8	68.2	70.2
Net operating revenue	574,640,414	358,755,364	226,184,313	160,864,791	148,924,578	126,352,365
Railway tax accruals	$371,271,391	184,976,119	74,994,482	51,835,296	43,504,076	40,503,212
Federal income taxes	@304,509,292	131,801,252	29,444,853	.....	.....	.....
All other taxes	66,762,099	53,174,867	45,549,629	.....	.....	.....
Equipment and joint facility rents	%6,605,357	6,605,357	2,460,264	4,229,261	5,560,141	6,809,725
Net railway operating income	*196,763,666	167,173,888	148,729,567	104,800,234	99,860,361	79,039,428
Rate of return to total investment—per cent	7.05	6.07	5.46	3.92	3.76	2.97
Average for Class I R. R.'s	.....	.....	3.75	2.59	2.25	1.43
Before Federal Taxes						
Net railway operating income	501,272,958	298,975,140	178,174,420	.....	.....	.....
Rate of return to total investment—per cent	17.96	10.84	6.54	.....	.....	.....

*—Same rate of increase over 1942 as first half of 1943 over first half of 1942.

$—Difference between Net operating revenue and sum of Rents and Net railway operating income.

@—1942 Federal income taxes increased by 80 per cent of increase in net operating revenue, 1943 over 1942

%—Estimated same as 1942.

[fol. 2757]

EXHIBIT No. 11

I. C. C. Docket No. 29000—Witness: Paul Tanner

Com. of Kentucky

Statement Showing Final Assessments of Petitioners Properties in Kentucky for State and Local Taxes for the Years 1938–1941, Inclusive, also Kentucky State Income and Franchise Tax Accruals for the Years 1939–1942, Inclusive

Year	Final Assessments	Income tax Accruals	Franchise tax Accruals	Total Income and Franchise tax Accruals
1938	$229,122,492			
1939	229,506,648	$308,082.07	$640,653.35	$948,735.42
1940	238,289,621	393,692.74	644,447.13	1,038,139.87
1941	241,919,599	673,506.29	689,226.30	1,362,732.59
1942	Incomplete	440,649.24	708,453.98	1,149,103.22
Total	$938,838,360	$1,815,930.34	$2,682,780.76	$4,498,711.10
Average	$234,709,590	$453,982.58	$670,695.19	$1,124,677.77

[fol. 2758]

EXHIBIT No. 12

Docket No. 29000—Witness: Whitnock

Net Railway Operating Income Before Federal Income Taxes

Selected Railroads Operating in Kentucky

1936–1942–43

(Dollar figures in thousands)

Railroad	1936	1937	1938	1939	1940	1941	1942	12 Months Ended 6/30/43	% Inc. 12 Mos. Ended 6/30/43 over 1936–1939 Average	% Inc. 12 Mos. Ended 6/30/43 over Year 1941
C. & O.	$58,354	$48,730	$33,070	$41,098	$50,069	$60,896	$78,899	$86,802	91.6%	42.5%
Clinchfield	2,788	3,139	2,287	3,393	3,935	5,888	6,531	6,672	130.9	13.3
C. N. O. & T. P.	5,461	5,292	4,371	5,734	5,800	8,177	12,337	15,202	191.5	85.9
G. M. & O.	.....	.....	.....	.....	1,014	4,419	8,253	10,210	.....	131.0
I. C.	14,131	14,636	11,712	15,717	14,606	22,120	39,429	46,204	212.2	108.9
L. & N.	19,985	16,605	11,807	16,925	19,755	34,991	61,891	79,095	384.3	126.0
N. C. & St. L.	1,383	840	1,482	1,989	2,214	4,060	9,239	13,261	831.3	226.6
N. & W.	41,385	39,210	26,147	37,719	43,204	52,926	60,630	65,479	81.3	23.7
Sou.	19,613	14,847	14,304	20,777	21,457	38,700	75,591	95,732	450.7	147.4
Tenn. Cen.	500	334	251	314	330	454	624	939	168.3	106.8
9 Roads*	163,600	143,634	108,381	143,666	161,191	228,212	345,171	409,386	192.8	79.4
10 Roads	.....	.....	.....	.....	162,204	232,631	353,424	419,596	.....	80.4

* Does not include the Gulf, Mobile & Ohio, data for which do not exist prior to 1940.

Source: Reports of the carriers to the Interstate Commerce Commission.

[fol. 2759]

EXHIBIT No. 13

Docket No. 29000

Freight Service Operating Ratio

Selected Railroads Operating in Kentucky

1936–1943

Railroad	1936	1937	1938	1939	1936–1939	1940	1941	1942	Estimated 1st 6 Months 1943 [1]	Changes 1942 Compared with 1936–1939 Average	Changes 1942 Compared with 6 Months 1943
C. & O.	46.7	51.3	54.1	52.2	50.8	50.4	48.4	48.7	50.9	− 2.1	−2.2
C. N. O. & T. P.	52.9	55.4	58.9	54.7	55.4	54.3	52.6	51.2	51.1	− 4.2	+ .1
I. C. [2]	64.7	67.2	64.6	65.5	65.5	67.1	64.3	60.8	62.6	− 4.7	−1.8
L. & N.	65.0	67.9	67.2	64.7	66.1	64.9	58.5	55.9	55.8	−10.2	+ .1
Southern	61.7	65.4	62.4	60.2	62.4	60.5	57.9	55.1	54.2	− 7.3	+ .9
10 Southern Roads: [3] Total	56.6	60.1	60.3	58.1	58.7	57.9	57.4	54.9	55.8	− 3.8	− .9

[1] See Appendix for method of estimating 1943 freight operating ratio.

[2] Includes the Yazoo & Mississippi Valley R. R.

[3] Includes the following roads:

Chesapeake & Ohio R.R.
Clinchfield R.R.
Cincinnati, New Orleans & Tex. Pac. R.R.
Gulf, Mobile & Ohio R.R.
Illinois Central & Yazoo & Miss. Valley R.R. Cos.
Louisville & Nashville R.R.
Tennessee Central R.R.
Nashville, Chattanooga & St. Louis R.R.
Norfolk & Western R.R.
Southern R.R.

Source: Years 1936 through 1942 based on data in annual reports of the carriers to the I. C. C.
Six months of 1943 estimated on basis explained in Appendix.

[fol. 2760]

EXHIBIT No. 14

Docket No. 29000

Passenger Service Operating Ratios

Selected Railroads Operating in Kentucky

1936–1943

Railroad	1936	1937	1938	1939	1936–1939	1940	1941	1942	Estimated 1st 6 Months 1943[1]	Changes 1942 compared with 1936–19[illegible] Average	Changes 1942 compared with Six Months 1943
C. & O.	174.3%	183.1%	196.2%	191.7%	186.0%	187.3%	158.3%	97.0%	79.4%	−89.0	+17.6
C. N. O. & T. P.	116.0	106.0	116.6	117.7	113.8	117.4	96.2	62.1	53.5	−51.7	+ 8.6
I. C.[2]	132.4	116.4	120.2	123.4	123.0	126.7	118.4	94.0	74.4	−29.0	+19.6
L. & N.	129.8	134.3	142.6	142.0	137.0	144.0	118.9	72.0	52.7	−65.0	+19.3
Sou.	111.6	109.0	115.4	116.0	112.8	117.7	93.6	57.4	47.8	−55.4	+ 9.6
10 Southern Roads:[3] Total	131.4	127.5	135.3	135.5	132.3	136.8	118.5	75.2	61.0	−57.1	+14.2

[1] See Appendix for method of estimating 1943 passenger operating ratio.

[2] Includes the Yazoo & Mississippi Valley R. R.

[3] Includes the following roads:

Chesapeake & Ohio R.R.
Clinchfield R.R.
Cincinnati, New Orleans & Tex. Pac. RR.
Gulf, Mobile & Ohio R.R.
Illinois Central & Yazoo & Miss. Valley R.R. Cos.
Louisville & Nashville R.R.
Tennessee Central R.R.
Nashville, Chattanooga & St. Louis R R.
Norfolk & Western R.R.
Southern Railway Co.

Source: Years 1936 through 1942 based on data in annual reports of the carriers to the I. C. C. Six months of 1943 estimated on basis explained in Appendix.

[fols. 2761-2768]

EXHIBIT No. 15

Docket No. 29000

Operating Revenues and Expenses Assigned to Passenger Service
Ten Railroads Operating in Kentucky

	Revenues						Expenses		Passenger Operating Ratio
	Total Operating	Passenger	Mail	Express	All Other Excl. Freight	Assigned to Pass. Service	Total Operating	Assigned to Pass. Service	
Year 1942	1,019,038	114,013	13,684	9,186	24,448	145,236	588,637	109,275	75.2
1st 6 Months 1943	585,694	91,025	7,208	5,959	15,075	109,397	332,418	66,742	61.0

Source: 1942 assignment of revenues and expenses made by carriers in their annual reports to the I. C. C.
1943 assignment of revenues and expenses estimated as explained in Appendix to this exhibit.

[fol. 2769]

EXHIBIT No. 17

Docket No. 29000—Witness Whitnack

Valuation Data for Selected Railroads Operating in Kentucky

	(2) Investment in Road & Equip. & Other Property used in Transportation Service Dec. 31, 1939	(3) Investment in Road & Equip. & Other Property used in Transportation Service [1] Dec. 31, 1942	(4) Book Investment in Transportation Property Dec. 31, 1942	(5) Accrued Depreciation & Accrued Amortization of Defense Projects Dec. 31, 1942	(6) Cash & Materials & Supplies Dec. 31, 1942
C. & O.	$562,926	$599,936	$601,348	$122,473	$34,819
Clinchfield	68,097	68,897	3,070	398	6,069
C. N. O. & T. P.	82,918	83,894	58,980	10,158	6,412
G. M. & O.		88,300	69,344	4,750	6,660
I. C.	573,005	585,521	359,168	114,234	23,193
L. & N.	455,178	476,988	468,138	102,612	42,474
N. C. & St. L.	93,424	98,902	61,283	11,313	7,986
N. & W.	502,579	540,287	529,427	95,989	26,019
Southern	598,261	621,954	553,361	48,237	33,397
Tenn. Cent.	7,621	9,152	8,797	1,068	682

[1] Excludes acquisition adjustments.

Source: Col. (1)—I. C. C. Statement No. 4142, *Rate of Return on Value of Property of All Operating Steam Railway Companies, Calendar Year 1940.* (*Note—Column 1 withdrawn and stricken from Exhibit.*)

Col. (2) & (3)—I. C. C., *Preliminary Abstract of Railway Statistics*, 1939 and 1942.

Cols. (4), (5) & (6)—Annual reports of the carriers to the I. C. C. for the year 1942.

(Here follows 1 paster, side folio 2770)

[fol. 2770]

EXHIBIT No. 18

I. C. C. Docket No. 29000—Witness: Tassin

Freight Revenue (Accounts 101 and 121)

Month	C & O			C N O & T P			G M & O			I C (Incl. Y & M V)		
	1943	1942	Percent Inc. or Dec.	1943	1942	Percent Inc. or Dec.	1943	1942	Percent Inc. or Dec.	1943	1942	Percent Inc. or Dec.
January	$13,638,661	$11,193,826	21.84	$2,454,025	$1,666,717	47.24	$2,920,438	$1,927,455	51.52	$16,607,539	$11,804,439	40.69
February	13,491,501	9,810,529	37.52	2,155,893	1,582,300	36.25	2,866,594	1,882,673	52.26	15,763,241	12,072,485	30.57
March	16,048,171	12,257,712	30.92	2,498,754	2,024,920	23.40	3,135,455	2,064,465	51.88	17,433,926	13,717,503	27.09
April	15,218,361	14,081,565	8.07	2,319,114	2,139,773	8.38	3,231,167	2,428,138	33.07	15,871,845	13,580,433	16.87
May	14,870,720	15,197,594	D 2.15	2,504,670	2,111,501	18.62	2,730,381	2,656,219	2.79	17,972,897	15,329,595	17.24
June	12,100,156	14,824,076	D 18.37	2,316,702	2,130,731	8.73	2,554,310	2,540,097	0.56	15,994,831	14,776,642	8.24
Total	$85,367,570	$77,365,302	10.34	$14,249,158	$11,655,942	22.25	$17,438,345	$13,499,047	29.18	$99,644,279	$81,281,097	22.59
Average	$14,227,928	$12,894,217	10.34	$2,374,860	$1,942,657	22.25	$2,906,391	$2,249,841	29.18	$16,607,380	$13,546,850	22.59

Month	L & N			N C & St. L			Southern			Total		
January	$12,209,696	$9,237,378	32.18	$2,391,698	$1,441,361	65.93	$14,309,917	$10,712,215	33.59	$64,531,974	$47,983,391	34.49
February	11,960,821	8,755,802	36.60	2,288,013	1,361,028	68.11	13,682,669	10,001,142	36.81	62,208,732	45,465,959	36.82
March	13,360,199	10,211,014	30.84	2,529,176	1,592,020	58.87	15,197,830	11,923,281	27.46	70,203,511	53,790,915	30.51
April	12,960,409	11,500,624	12.69	2,455,715	1,648,021	49.01	14,903,036	12,554,549	18.71	66,959,647	57,933,103	15.58
May	12,864,427	11,680,044	10.14	2,592,484	1,826,352	14.95	14,996,283	13,281,683	12.91	68,531,852	62,082,988	10.39
June	12,204,943	12,049,878	1.29	2,478,488	2,019,982	22.70	13,272,939	13,373,670	D 0.75	60,922,369	61,715,076	D 1.18
Total	$75,560,495	$63,434,740	19.12	$14,735,574	$9,888,764	49.01	$86,362,674	$71,846,540	20.20	$393,358,095	$328,971,432	19.57
Average	$12,593,416	$10,572,457	19.12	$2,455,929	$1,648,127	49.01	$14,393,779	$11,974,423	20.20	$65,559,683	$54,828,572	19.57

D—Denotes Decrease.

Source: Monthly Reports of Association of American Railroads, Bureau of Railway Economics.

[fol. 2771]

EXHIBIT No. 19

I. C. C. Docket No. 29000—Witness: Tassin

58—574

BEFORE THE
INTERSTATE COMMERCE COMMISSION
IN THE MATTER OF PASSENGER FARES AND CHARGES
FOR INTRASTATE TRAFFIC BETWEEN POINTS IN KENTUCKY

Investment in Railway Property Used in Transportation Service—Schedule 211N (1); Cash—Schedule 200A (2); Material and Supplies—Schedule 200A (3); Total Investment (4); Net Railway Operating Income—Schedule 300I (5); Rate of Return (6)

[fol. 2772]

Chesapeake and Ohio Railway Company

Investment in Railway Property Used in Transportation Service—Schedule 211N (1); Cash—Schedule 200A (2); Material and Supplies—Schedule 200A (3); Total Investment (4); Net Railway Operating Income—Schedule 300I (5); Rate of Return (6)

Year	(1) Investment	(2) Cash	(3) Mat. & Sup.	(4) Total	(5) N. R. O. I.	(6) Return
1921	$360,598,554	$7,617,938	$12,579,054	$380,795,546	$15,221,667	4.00%
1922	365,841,727	7,237,405	9,464,355	382,543,487	16,655,397	4.35
1923	385,963,070	7,095,077	12,592,832	405,650,979	21,589,425	5.32
1924	406,474,057	10,602,904	8,633,997	425,710,958	25,411,000	5.97
1925	429,114,192	11,509,196	7,524,026	448,147,414	33,637,284	7.51
1926	442,142,597	8,955,747	7,054,467	458,152,811	41,208,060	8.99
1927	460,205,816	5,334,586	5,881,719	471,422,121	41,251,596	8.75
1928	468,140,046	8,255,244	4,473,464	480,868,754	41,948,340	8.72
1929	490,862,545	9,701,815	4,341,900	504,906,260	43,917,074	8.70
1930	532,542,747	10,381,834	4,303,863	547,228,444	40,515,559	7.40
1941	537,133,443	3,106,276	4,882,111	545,121,830	35,329,943	6.48
1932	544,227,412	3,239,227	4,521,277	551,987,916	32,502,269	5.89
1933	541,596,811	6,063,112	4,211,169	551,871,092	36,967,128	6.70
1934	545,423,612	4,136,129	4,076,644	553,636,385	36,997,795	6.68
1935	542,375,497	8,205,540	3,907,805	554,488,842	39,937,282	7.20
1936	553,679,034	24,681,744	3,833,965	582,194,743	52,734,862	9.06
1937	558,889,446	24,327,094	3,965,233	587,181,773	42,614,450	7.26
1938	557,761,074	25,893,724	3,483,199	587,137,997	28,983,311	4.94
1939	562,925,776	27,847,376	4,549,351	595,322,503	36,354,138	6.11
1940	570,281,766	32,355,330	5,314,995	607,952,091	40,817,746	6.71
1941	581,805,859	26,267,894	6,790,661	614,864,414	51,559,187	8.39
1942	599,935,693	27,989,172	6,829,579	634,754,444	39,643,584	6.25
Total	$11,037,920,774	$300,804,364	$133,215,666	$11,471,940,804	$795,797,097	6.94%
Average	$501,723,671	$13,672,926	$6,055,258	$521,451,855	$36,172,595	6.94%
Short Cut Utilized				$521,451,860	$36,172,595	6.94%

1327

The Cincinnati, New Orleans and Texas Pacific Railway Company

Investment in Railway Property Used in Transportation Service—Schedule 211N (1); Cash—Schedule 200A (2); Material and Supplies—Schedule 200A (3); Total Investment (4); Net Railway Operating Income—Schedule 300I (5); Rate of Return (6)

Year	(1) Investment	(2) Cash	(3) Mat. & Sup.	(4) Total	(5) N. R. O. I.	(6) Return
1921	$52,761,120	$2,428,622	$1,970,247	$57,159,989	$1,942,444	3 40%
1922	53,679,384	2,140,349	1,803,558	57,623,291	1,910,018	3 31
1923	55,029,316	2,220,200	3,005,623	60,255,139	4,856,706	8 06
1924	57,279,692	2,738,482	2,400,090	62,418,264	5,574,443	8 93
1925	57,587,885	3,825,523	2,496,869	63,910,277	7,328,954	11 47
1926	61,262,817	2,665,133	2,539,020	66,466,970	5,707,689	8 59
1927	61,326,150	3,412,309	2,634,200	67,372,659	4,709,507	6 99
1928	64,139,899	4,957,769	2,028,714	71,126,382	4,917,528	6 91
1929	65,735,716	5,283,740	1,278,096	72,297,552	3,995,695	5 53
1930	76,779,203	2,902,751	1,023,892	80,705,846	3,620,613	4 49
1931	77,265,693	2,526,024	991,180	80,782,896	2,046,108	2 53
1932	77,244,878	2,372,829	942,984	80,560,691	1,737,111	2 16
1933	74,168,701	5,438,228	771,724	80,378,653	3,354,223	4 17
1934	74,524,826	7,678,036	757,060	82,959,922	3,257,307	3 93
1935	75,379,167	7,106,697	658,240	83,144,104	3,583,309	4 31
1936	75,244,913	9,382,208	668,240	85,295,361	4,936,368	5 79
1937	82,719,076	7,515,142	842,892	91,077,200	4,874,611	5 35
1938	83,177,117	7,230,791	587,715	90,995,623	3,996,690	4 39
1939	82,918,367	8,665,817	743,530	92,327,714	5,185,059	5 62
1940	83,342,509	8,078,081	770,134	92,190,724	4,998,100	5 42
1941	83,154,409	8,804,377	1,290,063	93,248,849	5,958,047	6 39
1942*	83,894,403	5,200,176	1,211,813	90,306,392	5,222,964	5 78
Total	$1,558,615,241	$112,573,284	$31,415,974	$1,702,604,499	$93,713,494	5 50%
Average	$70,846,147	$5,116,967	$1,427,999	$77,391,113	$4,259,704	5 50%
Short Cut Utilized				$77,391,113	$4,259,705	5 50%

* See copy of correspondence on page 8.

Gulf, Mobile and Ohio Railway Company

Investment in Railway Property Used in Transportation Service—Schedule 211N (1); Cash—Schedule 200A (2); Material and Supplies—Schedule 200A (3); Total Investment (4); Net Railway Operating Income—Schedule 300I (5); Rate of Return (6)

Year	(1) Investment	(2) Cash	(3) Mat. & Sup.	(4) Total	(5) N. R. O. I.	(6) Return
1921	$91,829,409	$1,577,447	$1,838,832	$95,245,688	$1,253,554	1.32%
1922	90,882,788	3,029,880	2,130,110	96,042,778	4,134,203	4.30
1923	94,033,449	2,180,294	2,554,196	98,767,939	4,363,467	4.42
1924	96,404,814	2,263,482	2,033,685	100,701,981	5,263,595	5.23
1925	99,850,287	3,010,065	1,962,102	104,822,454	5,620,761	5.36
1926	103,058,393	3,260,481	2,117,429	108,436,303	5,410,040	4.99
1927	108,946,002	4,314,632	2,284,972	115,545,606	4,767,600	4.13
1928	113,802,172	3,306,716	1,874,924	118,983,812	4,517,485	3.80
1929	113,640,181	2,417,916	1,799,953	117,858,050	4,245,812	3.60
1930	114,368,888	3,905,003	1,578,688	119,852,579	1,539,428	1.28
1931	112,792,901	1,879,666	1,149,359	115,821,926	268,476	0.23
1932	110,443,791	2,407,232	1,011,077	113,862,100	Def. 531,298	Def. 0.47
1933	101,304,055	1,978,246	1,127,311	104,409,612	925,019	0.89
1934	101,470,754	1,898,961	1,146,605	104,516,320	482,499	0.46
1935	101,443,415	1,838,146	1,121,131	104,402,692	1,173,074	1.12
1936	101,256,957	2,186,379	1,318,322	104,761,658	2,675,310	2.55
1937	102,372,332	1,611,978	1,862,537	105,846,847	2,081,960	1.97
1938	102,469,739	2,164,919	1,933,728	106,568,386	1,794,596	1.68
1939	99,368,743	1,980,760	2,281,242	103,630,745	2,154,857	2.08
1940	80,229,410	2,710,794	1,575,694	84,515,898	1,505,525	1.78
1941	80,459,497	3,746,448	1,669,907	85,875,852	3,661,460	4.26
1942	88,299,738	4,791,141	1,868,936	94,959,815	5,648,668	5.95
Total	$2,208,727,715	$58,460,586	$38,420,740	$2,305,429,041	$62,956,091	2.73%
Average	$100,396,714	$2,657,299	$1,738,215	$104,792,228	$2,861,641	2.73
Short Cut method utilized*				$102,157,262	$2,879,194	2.82

* Adjustment to actual necessitates the following changes on page 6 of Exhibit No. 6:

Increase Investment by		Inc. $2,634,966	
Decrease Net Railway Operating Income by			Dec. $17,553
Decrease Return on Investment by			Dec. 0.09

Illinois Central Railroad Company

Investment in Railway Property Used in Transportation Service—Schedule 211N (1); Cash—Schedule 200A (2); Material and Supplies—Schedule 200A (3); Total Investment (4); Net Railway Operating Income—Schedule 300I (5); Rate of Return (6)

Year	(1) Investment	(2) Cash	(3) Mat. & Sup.	(4) Total	(5) N. R. O. I.	(6) Return
1921	$403,328,020	$8,031,862	$13,493,835	$424,853,717	$24,396,768	5.74%
1922	420,017,158	10,469,752	13,022,310	443,509,220	25,121,128	5.66
1923	469,372,024	7,935,265	21,212,529	498,519,818	22,906,244	4.59
1924	496,154,353	17,886,348	12,423,757	526,464,458	23,761,649	4.51
1925	527,014,978	9,508,352	13,008,544	549,531,874	25,113,866	4.57
1926	567,881,237	6,679,809	12,530,610	587,091,656	26,202,012	4.46
1927	581,352,667	6,802,927	12,549,085	600,704,679	25,615,628	4.26
1928	607,017,909	8,108,203	9,253,000	624,379,112	25,761,835	4.13
1929	617,899,600	7,514,771	10,105,602	635,519,973	24,447,079	3.85
1930	619,757,778	8,638,186	9,088,888	637,484,852	20,907,875	3.28
1931	620,172,721	4,343,132	7,442,150	631,958,003	11,421,469	1.81
1932	617,274,358	6,282,026	7,224,679	630,781,063	12,434,934	1.97
1933	615,106,407	5,943,831	6,954,919	628,005,157	15,371,241	2.45
1934	614,516,646	8,154,780	7,395,498	630,066,924	12,688,092	2.01
1935	597,492,639	10,054,954	6,538,937	614,086,530	6,108,950	0.99
1936	587,643,915	12,548,353	6,881,097	607,073,365	14,087,852	2.32
1937	588,509,645	8,750,456	8,811,480	606,071,581	14,635,913	2.41
1938	585,568,569	10,998,019	6,655,716	603,222,304	14,712,384	2.44
1939	573,004,784	13,958,584	5,998,194	592,961,562	15,717,031	2.65
1940	590,053,723	12,215,288	6,439,330	608,708,341	14,638,099	2.40
1941	591,756,192	14,293,247	11,460,086	617,449,525	21,101,522	3.42
1942	585,520,728	10,824,698	12,368,131	608,713,557	30,385,720	4.99
Total	$12,476,416,051	$209,942,843	$220,798,377	$12,907,157,271	$427,537,301	3.31%
Average	$567,109,820	$9,542,857	$10,036,290	$586,688,967	$19,433,514	3.31
Short Cut Method Utilized*				$586,724,446	$19,770,778	3.37

* Adjustment to actual necessitates the following changes on page 6 of Exhibit No. 6:

Decrease Investment by ..... Dec. $35,479

Decrease Net Railway Operating Income by ..... Dec. $337,264

Decrease Return on Investment by ..... Dec. 0.06

Louisville & Nashville Railroad Company

Investment in Railway Property Used in Transportation Service—Schedule 211N (1); Cash—Schedule 200A (2); Material and Supplies—Schedule 200A (3); Total Investment (4); Net Railway Operating Income—Schedule 300[illegible] (5); Rate of Return (6)

Year	(1) Investment	(2) Cash	(3) Mat. & Sup.	(4) Total	(5) N. R. O. I.	(6) Return
1921	$343,561,542	$12,902,308	$13,226,320	$369,690,170	$4,426,932	1.20%
1922	349,654,873	16,211,321	13,146,720	379,012,914	18,164,233	4.79
1923	376,472,131	15,951,448	18,457,133	410,880,712	21,263,142	5.18
1924	400,605,117	17,225,516	14,411,328	432,241,961	22,816,578	5.28
1925	413,247,390	21,746,564	14,911,507	449,905,461	27,682,388	6.15
1926	430,266,906	19,893,252	15,553,942	465,714,100	27,640,818	5.94
1927	442,874,857	18,721,336	15,493,369	477,089,562	24,620,055	5.16
1928	452,667,645	15,883,496	11,411,612	479,962,753	22,587,254	4.71
1929	464,223,276	20,233,770	12,102,593	496,559,639	20,874,750	4.20
1930	472,068,366	11,890,608	10,968,109	494,927,083	14,006,913	2.83
1931	473,588,923	15,787,976	9,244,933	498,621,832	9,519,324	1.91
1932	475,434,274	12,988,710	9,842,132	497,765,116	8,278,090	1.66
1933	465,806,677	8,094,773	9,303,300	483,204,750	11,857,689	2.45
1934	458,647,143	9,715,383	8,866,602	477,229,128	12,967,297	2.72
1935	452,789,916	13,621,017	8,355,857	474,766,790	13,961,959	2.94
1936	450,257,241	17,608,646	8,427,789	476,293,676	19,257,364	4.04
1937	455,014,183	14,782,121	8,804,451	478,597,755	15,551,121	3.25
1938	456,038,321	17,261,117	7,629,118	480,928,556	11,622,971	2.42
1939	455,178,454	31,042,100	8,903,745	495,124,299	15,848,660	3.20
1940	457,713,854	18,684,663	9,707,783	486,106,300	17,187,993	3.54
1941	470,911,426	26,841,025	11,572,630	509,325,081	25,548,223	5.02
1942	476,988,019	30,223,337	12,251,055	519,462,411	23,732,085	4.57
Total	$9,694,007,534	$387,310,487	$252,092,028	$10,333,410,049	$389,415,839	3.77%
Average	$440,636,706	$17,605,022	$11,458,729	$469,700,457	$17,700,720	3.77%
Short Cut Utilized				$469,700,458	$17,700,721	3.77%

Nashville, Chattanooga and St. Louis Railway Company

Investment in Railway Property Used in Transportation Service—Schedule 211N (1); Cash—Schedule 200A (2); Material and Supplies—Schedule 200A (3); Total Investment (4); Net Railway Operating Income—Schedule 300I (5); Rate of Return (6)

Year	(1) Investment	(2) Cash	(3) Mat. & Sup.	(4) Total	(5) N. R. O. I.	(6) Return
1921	$86,932,433	$2,328,638	$2,602,185	$91,861,256	$1,071,619	1.17%
1922	87,642,806	2,542,342	2,468,159	92,653,307	3,094,208	3.34
1923	90,629,410	1,684,002	3,059,809	95,373,221	3,061,971	3.21
1924	92,040,999	1,737,475	2,597,932	96,376,406	3,433,767	3.56
1925	93,642,545	1,808,954	2,630,150	98,081,649	3,937,805	4.01
1926	95,512,153	1,988,098	2,641,162	100,141,413	4,018,155	4.01
1927	96,253,147	1,724,571	2,439,155	100,416,873	3,841,261	3.83
1928	97,649,959	1,198,815	1,918,372	100,767,146	4,232,896	4.20
1929	97,462,748	2,294,954	1,804,954	101,562,656	4,845,801	4.77
1930	98,685,883	979,708	1,751,468	101,417,059	2,112,288	2.08
1931	98,743,951	904,774	1,488,416	101,137,141	822,215	0.81
1932	98,744,377	832,589	1,347,310	100,924,276	715,254	0.71
1933	98,169,789	510,137	1,517,412	100,197,338	992,602	0.99
1934	97,955,627	682,565	1,320,916	100,159,108	953,544	0.95
1935	96,700,446	937,661	1,372,195	99,010,302	523,010	0.53
1936	95,273,593	1,518,795	1,589,573	98,381,961	1,382,842	1.41
1937	95,352,962	851,972	1,684,995	97,889,929	840,290	0.86
1938	94,657,732	2,253,244	1,578,272	98,489,248	1,481,936	1.50
1939	93,424,332	3,754,336	1,785,678	98,964,346	1,982,653	2.00
1940	93,513,209	3,357,650	2,136,245	99,006,504	2,069,426	2.09
1941	95,853,705	3,701,248	2,703,987	102,258,904	3,309,419	3.24
1942	98,902,284	5,119,885	2,865,891	106,888,060	5,702,913	5.34
Total	$2,093,744,090	$42,709,813	$45,504,236	$2,181,958,139	$54,425,875	2.49
Average	$95,170,186	$1,941,355	$2,068,374	$99,179,915	$2,473,903	2.49
Short Cut Method Utilized*				$99,179,924	$2,445,499	2.49

* Adjustment to actual necessitates the following changes on page 6 of Exhibit No. 6:
Decrease Investment by ..... Dec. $9
Decrease Net Ry. Operating Income by: ..... Dec. $1,596
No change in Rate of Return .....

—o—

Investment in Railway Property Used in Transportation Service—Schedule 211N (1); Cash—Schedule 200A (2); Material and Supplies—Schedule 200A (3); Total Investment (4); Net Railway Operating Income—Schedule 300I (5); Rate of Return (6)

Year	(1) Investment	(2) Cash	(3) Mat. & Sup.	(4) Total	(5) N. R. O. I.	(6) Return
1921	$516,736,245	$8,197,654	$13,591,985	$538,525,884	$13,973,045	2.59%
1922	523,029,092	14,291,525	12,461,624	549,782,241	20,676,193	3.76
1923	538,142,300	10,124,120	17,319,743	565,586,163	28,436,307	5.03
1924	558,409,681	10,617,095	11,543,052	580,569,828	30,673,820	5.28
1925	575,630,982	16,114,989	10,963,452	602,709,423	35,377,294	5.87
1926	593,430,690	14,021,026	11,854,684	619,306,400	35,769,145	5.78
1927	603,047,523	13,352,499	11,001,250	627,401,272	32,963,768	5.25
1928	621,420,080	14,812,962	9,033,426	645,266,468	30,898,699	4.79
1929	623,740,422	11,934,179	6,984,239	642,658,840	30,244,246	4.71
1930	628,570,896	9,491,011	5,963,962	644,025,869	19,777,932	3.07
1931	629,438,967	4,830,622	4,889,241	639,158,830	8,219,535	1.29
1932	628,316,595	8,267,863	3,922,225	640,506,683	4,346,060	0.68
1933	608,359,859	5,399,727	4,045,433	617,805,019	15,024,652	2.43
1934	600,548,797	5,283,839	4,196,788	610,029,424	12,707,119	2.08
1935	594,922,544	6,099,126	4,466,537	605,488,207	14,311,509	2.36
1936	588,167,259	8,419,462	5,395,526	601,982,247	19,430,632	3.23
1937	583,833,021	6,684,524	6,638,436	597,155,981	15,254,899	2.55
1938	597,036,611	7,545,415	4,772,252	609,354,278	14,879,661	2.36
1939	602,916,947	9,888,216	6,174,956	618,980,119	20,631,130	3.33
1940	600,479,985	9,854,689	6,547,559	616,882,233	21,457,294	3.48
1941	611,510,178	16,640,484	8,796,645	636,947,307	32,789,981	5.15
1942	622,019,029	23,907,594	9,489,184	655,415,807	46,265,818	7.06
Total	$13,049,707,703	$235,778,621	$180,052,199	$13,465,538,523	$503,608,759	3.74
Average	$593,168,531	$10,717,210	$8,184,191	$612,069,932	$22,891,307	3.74
Short Cut Utilized*				$612,860,440	$22,888,182	3.73

* Adjustment to actual necessitates the following changes on page 6 of Exhibit No. 6:
Investment: Dec. $790,508; Net Ry. Operating Income: Inc. $3,125; Return on Investment: Dec. 0.01.

Summary of Corrections: Total as rendered $2,469,465,503 $106,116,674 4.30

GM&O	Inc. 2,634,966	Dec. 17,553	Dec. 0.09
Sou. Ry.	Dec. 790,508	Inc. 3,125	" 0.01
I. C.	" 35,479	Dec. 337,264	" 0.06
N. C. & St. L.	" 9	1,596	—
Adjusted Total	$2,471,274,473	$105,763,386	4.28

[Copy]

The Cincinnati, New Orleans and Texas Pacific Railway Company

Miss Lucille Tobin, Secretary,
Railroad Commission of Kentucky,
Frankfort, Kentucky.

Washington (13) D. C.
September 11, 1943
File 581/13

Dear Miss Tobin:

In comparing our file copy of this company's Annual Report to the Railroad Commission of Kentucky for the year ended December 31, 1942 which was mailed to your Commission April 29, 1943, we find that on April 30, 1943 we advised the Interstate Commerce Commission of corrections to be made in the report on pages 207 and 208.

A copy of my letter dated April 30, 1943 to Director Lorenz of the Interstate Commerce Commission is attached for ready reference and I will appreciate it if you will see that the corrections referred to are made in your copy of this company's report for the year ended December 31, 1942.

Yours very truly,

(Signed) T. H. Seay, Comptroller

Mr. M. O. Lorenz, Director,
Bureau of Transport Economics and Statistics,
Interstate Commerce Commission, Washington, D. C.

Washington, D. C.,
April 30, 1943. File 581/13

Dear Sir:

Your letter April 27, 1943, concerning Annual Report of this company to the Interstate Commerce Commission for the year ended December 31, 1942:

We have now received some additional data concerning the Annual Report of The Cincinnati Southern Railway and based upon this information, the following corrections are authorized in this company's Annual Report for the year ended December 31, 1942:

Page 208, Schedule 213, item 4(a), change from $606,505 to $262,959 Cr.
item 4(b), change from 606,505 to $262,959 "
Total under item 4 change from 811,136 to 58,328 "

Page 207, Schedule 211N, the item shown in columns (c) and (e) on line 10, i. e., $24,942,006 is the net charge after the adjustment referred to above and consequently the following eliminations should be made from this schedule:

Lines 11 and 12, column (a), eliminate "Less retirement of Old Ohio River Bridge."
Line 12, columns (c) and (e), eliminate item designated (E) $1,002,953.
Line 13, columns (c) and (e), eliminate figures $23,939,053.
Line 49, columns (c) and (e), change total of $82,891,450 to $83,894,403 in each instance.

Yours very truly,

(Signed) T. H. Seay, Comptroller.

P. S.

Confirming conversation with Mr. Kreps, I understand you will insert on Page 405, in compliance with Schedule 417, the words "Diesel Electric." Page 504, line 26, should read 62.19.

[fol. 2780] EXHIBIT No. 20

I. C. C. Docket No. 29000—Witness: F. H. Tucker, Jr.

Statement of Train Connections at Fulton, Ky.

June 1943

(#101 scheduled in at 8:10pm) (#103 scheduled in at 5:30am)
(# 1 scheduled out at 8:25p) (# 3 scheduled out at 5:55a)

Date	#101 arrived	#1 dept'd	Time between trains	#103 arrived	#3 dept'd	Time between trains
1	8:50p	9:28p	38″	5:35a	5:55a	20″
2	8:10p	9.57p	1′ 47″	5:35a	5:55a	20″
3	8:18p	8:38p	20″	5:30a	6:30a	1′
4	8:20p	8:40p	20″	6:00a	6:20a	20″
5	8:18p	8:52p	34″	8:20a	8:40a	20″
6	8:10p	8:42p	32″	6:17a	6:45a	28″
7	8:10p	8:25p	15″	5:30a	5:55a	25″
8	8:20p	8:50p	30″	5:30a	5:55a	25″
9	8:25p	9:03p	38″	6:25a	6:44a	19″
10	8:20p	9:16p	56″	5:50a	6:10a	20″
11	8:10p	8:50p	40″	5:40a	6:24a	44″
12	8:10p	8:30p	20″	5:30a	6:05a	35″
13	8:25p	8:55p	30″	5:30a	5:55a	25″
14	8:10p	8:33p	23″	5:30a	6:00a	30″
15	8:10p	9:10p	1′	5:30a	6:00a	30″
16	8:10p	8:50p	40″	5:30a	6:18a	48″
17	8:10p	8:53p	43″	5:30a	6:05a	35″
18	8:30p	8:50p	20″	5:30a	6:10a	40″
19	8:25p	8:50p	25″	5:30a	5:55a	25″
20	8:10p	8:33p	23″	5:40a	5:55a	15″
21	8:10p	8:25p	15″	5:30a	5:55a	25″
22	8:10p	8:33p	23″	5:40a	5:55a	15″
23	8:10p	8:27p	17″	5:30a	5:45a	15″
24	8:10p	8:25p	15″	5:30a	6:05a	35″
25	8:25p	8:40p	15″	5:30a	5:55a	25″
26	8:25p	8:37p	12″	5:30a	6:05a	35″
27	8:10p	8:50p	20″	5:42a	6:05a	23″
28	8:15p	8:40p	25″	5:30a	6:05a	35″
29	8:20p	8:37p	17″	5:30a	5:55a	25″
30	8:10p	8:25p	15″	6:00a	6:20a	20″

[fol. 2781]

Statement of Train Connections at Fulton, Ky.

July 1943

(#101 scheduled in at 8:10pm) (#103 scheduled in at 5:30am)
(# 1 scheduled out at 8:25 p) (# 3 scheduled out at 5:55a)

Date	#101 arrived	#1 dept'd	Time between trains	#103 arrived	#3 dept'd	Time between trains
1	8:10p	9:31p	1' 21"	5:30a	6:05a	35"
2	8:10p	8:25p	15"	5:50a	6:24a	34"
3	8:55p	9:05p	10"	5:30a	5:55a	25"
4	8:20p	8:33p	13"	6:04a	6:25a	21"
5	8:10p	8:29p	19"	5:30a	5:55a	25"
6	8:10p	8:50p	40"	5:45a	6:00a	15"
7	8:10p	8:38p	28"	5:30a	5:55a	25"
8	8:10p	8:25p	15"	5:30a	5:55a	25"
9	8:10p	8:25p	15"	5:30a	6:10a	40"
10	8:10p	8:47p	37"	5:30a	5:55a	25"
11	8:10p	8:30p	20"	5:30a	5:55a	25"
12	8:10p	8:30p	20"	5:30a	6:10a	40"
13	8:55p	9:28p	33"	5:30a	5:55a	25"
14	8:25p	8:43p	18"	5:30a	5:55a	25"
15	8:10p	8:38p	18"	5:50a	6:10a	20"
16	8:10p	8:37p	27"	5:40a	6:05a	25"
17	8:20p	8:37p	17"	5:50a	6:04a	14"
18	8:10p	8:25p	15"	5:44a	6:05a	21"
19	9:25p	9:50p	25"	6:45a	7:00a	15"
20	8:10p	8:25p	15"	5:45a	6:00a	15"
21	8:30p	8:52p	22"	5:45a	6:05a	20"
22	8:10p	8:25p	15"	5:45a	6:18a	33"
23	8:10p	8:33p	23"	5:40a	6:05a	25"
24	8:10p	8:40p	30"	5:30a	6:00a	30"
25	8:10p	8:25p	15"	5:30a	6:00a	30"
26	8:20p	8:34p	14"	5:30a	5:55a	25"
27	8:10p	8:25p	15"	5:40a	6:10a	30"
28	9:10p	9:29p	19"	5:40a	6:05a	25"
29	8:57p	9:27p	30"	6:05a	6:20a	15"
30	8:10p	8:30p	20"	6:35a	6:55a	20"
31	8:10p	8:30p	20"	5:40a	6:00a	20"

[fol. 2782]

Statement of Train Connections at Fulton, Ky.

August 1943

(#101 scheduled in at 8:10pm) (#103 scheduled in at 5:30am)
(# 1 scheduled out at 8:25p) (# 3 scheduled out at 5:55a)

Date	#101 arrived	#3 dept'd	Time between trains	#103 arrived	#3 dept'd	Time between trains
1	9:09p	9:25p	25"	5:55a	6:15a	20"
2	8:43p	8:55p	12"	5:30a	6:14a	44"
3	8:35p	8:50p	15"	5:30a	6:12a	42"
4	8:10p	8:30p	20"	6:50a	7:20a	30"
5	8:40p	8:57p	17"	5:40a	5:55a	15"
6	8:20p	8:43p	23"	5:55a	6:10a	15"
7	8:10p	8:25p	15"	5:30a	5:55a	25"
8	8:10p	8:25p	15"	5:40a	6:00a	20"
9	8:30p	8:50p	20"	5:40a	5:55a	15"
10	8:10p	8:25p	15"	5:30a	5:55a	25"
11	9:00p	9:19p	19"	5:30a	5:55a	25"
12	8:35p	8:58p	23"	5:30a	5:55a	25"
13	8:20p	8:43p	23"	5:38a	6:10a	32"
14	8:45p	9:09p	24"	5:30a	5:55a	25"
15	8:15p	8:27p	12"	6:20a	6:40a	20"
16	8:10p	8:25p	15"	5:30a	6:10a	40"
17	8:10p	8:25p	15"	5:30a	6:00a	30"
18	8:24p	8:45p	21"	5:30a	6:00a	30"
19	8:10p	8:25p	15"	5:30a	5:55a	25"
20	8:50p	9:12p	22"	5:45a	5:55a	10"
21	8:19p	8:32p	13"	5:30a	5:55a	25"
22	8:10p	8:25p	15"	5:50a	6:10a	20"
23	8:10p	8:30p	20"	5:30a	5:55a	25"
24	8:10p	8:25p	15"	5:30a	5:55a	25"
25	8:10p	8:25p	15"	5:30a	5:55a	25"
26	8:10p	8:25p	15"	6:05a	6:25a	20"
27	8:10p	8:29p	19"	5:45a	6:15a	30"
28	8:33p	8:40p	7"	5:30a	5:55a	25"
29	8:10p	8:25p	15"	6:00a	6:25a	25"
30	8:10p	8:35p	25"	5:30a	5:55a	25"
31	8:10p	8:25p	15"	6:15a	6:35a	20"

[fol. 2783]

Statement of Train Connections Between IC and B&O at Louisville

June 1943

	(IC 102 scheduled in at 5:50pm) (B&O 58 scheduled out at 7:00p)			(IC 104 scheduled in at 8:05am) (B&O 54 scheduled out at 8:30a)		
Date	IC #102 arrived	B&O #58 dept'd	Time between trains	IC #104 arrived	B&O #54 dept'd	Time between trains
1	7:30p	7:00p	missed	8:10a	8:38a	28"
2	6:30p	7:10p	40"	8:15a	8:37a	22"
3	5:50p	7:10p	1' 20"	8:05a	8:35a	30"
4	6:10p	7:00p	50"	8:20a	8:43a	23"
5	7:00p	7:10p	10"	8:15a	8:35a	20"
6	6:10p	7:08p	58"	8:30a	8:48a	18"
7	5:50p	7:00p	1' 10"	8:05a	8:30a	25"
8	6:15p	7:00p	45"	8:05a	8:35a	30"
9	6:01p	7:00p	59"	8:35a	8:53a	18"
10	[illegible]6p	7:00p	55"	8:18a	8:45a	27"
11	6:10p	7:00p	50"	9:00a	8:30a	missed
12	5:50p	7:00p	1' 10"	8:05a	8:30a	25"
13	6:25p	7:00p	35"	9:10a	8:30a	missed
14	6:00p	7:00p	1'	8:05a	8:30a	25"
15	5:50p	7:00p	1' 10"	9:00a	9:30a	30"
16	5:55p	7:00p	1' 5"	8:42a	9:05a	23"
17	6:35p	7:00p	25"	8:25a	8:42a	17"
18	6:00p	7:00p	1'	8:30a	8:45a	15"
19	6:15p	7:00p	45"	8:10a	8:30a	20"
20	6:00p	7:00p	1'	8:05a	8:45a	40"
21	5:50p	7:00p	1' 10"	8:05a	8:30a	25"
22	5:50p	7:00p	1' 10"	8:05a	8:34a	19"
23	5:50p	7:00p	1' 10"	8:10a	8:40a	30"
24	5:50p	7:00p	1' 10"	8:05a	8:30a	25"
25	6:30p	7:00p	30"	8:13a	8:40a	17"
26	5:50p	7:00p	1' 10"	8:05a	8:30a	25"
27	5:50p	7:00p	1' 10"	8:05a	8:30a	25"
28	5:50p	7:00p	1' 10"	8:05a	8:30a	25"
29	5:50p	7:00p	1' 10"	8:05a	8:30a	25"
30	5:50p	7:00p	1' 10"	8:20a	9:03a	43"

[fol. 2784]

Statement of Train Connections Between IC and B&O at Louisville

July 1943

(IC 102 scheduled in at 5:50pm) (IC 104 scheduled in at 8:05am)
(B&O 58 scheduled out at 7:00p) (B&O 54 scheduled out at 8:30a)

Date	IC #102 arrived	B&O #58 dept'd	Time between trains	IC #104 arrived	B&O #54 dept'd	Time between trains
1	5:50p	7:00p	1' 10"	8:18a	8:50a	22"
2	6:50p	7:00p	10"	8:05a	8:30a	25"
3	6:20p	7:00p	40"	8:05a	8:30a	25"
4	6:03p	7:00p	57"	8:10a	8:55a	45"
5	6:00p	7:00p	1'	8:05a	8:30a	25"
6	5:50p	7:00p	1' 10"	8:05a	8:30a	25"
7	5:50p	7:00p	1' 10"	8:05a	8:30a	25"
8	5:50p	7:00p	1' 10"	8:05a	8:30a	25"
9	6:00p	7:00p	1'	8:05a	8:30a	25"
10	6:30p	7:15p	45"	8:05a	8:30a	25"
11	6:35p	7:00p	25"	8:15a	9:40a	1' 25"
12	5:55p	7:00p	1' 5"	8:05a	8:30a	25"
13	5:50p	7:00p	1' 10"	8:05a	8:30a	25"
14	5:50p	7:00p	1' 10"	8:05a	8:30a	25"
15	6:00p	7:00p	1'	8:30a	8:52a	22"
16	5:50p	7:00p	1' 10"	8:20a	8:47a	27"
17	6:24p	7:00p	36"	8:35a	8:57a	22"
18	5:50p	7:00p	1' 10"	9:00a	9:25a	25"
19	5:55p	7:00p	1' 5"	8:30a	8:50a	20"
20	5:58p	7:00p	1' 2"	9:00a	9:30a	30"
21	6:30p	7:00p	30"	9:00a	9:15a	15"
22	6:00p	7:00p	1'	8:05a	8:30a	25"
23	5:55p	7:00p	1' 5"	8:05a	8:30a	25"
24	5:50p	7:00p	1' 10"	8:15a	8:30a	15"
25	5:55p	7:00p	1' 5"	8:30a	9:27a	57"
26	5:50p	7:00p	1' 10"	8:05a	8:30a	25"
27	5:55p	7:00p	1' 5"	8:05a	8:30a	25"
28	6:00p	7:00p	1'	8:25a	8:56a	31"
29	5:50p	7:00p	1' 10"	8:05a	8:30a	25"
30	6:05p	7:00p	55"	8:10a	8:30a	20"
31	6:00p	7:00p	1'	8:25a	8:48a	23"

[fol. 2785]

Statement of Train Connections Between IC and B&O at Louisville

August 1943

(IC 102 scheduled in at 5:50pm) (IC 104 scheduled in at 8:05am)
(B&O 58 scheduled out at 7:00p) (B&O 54 scheduled out at 8:30a)

Date	IC #102 arrived	B&O #58 dept'd	Time between trains	IC #104 arrived	B&O #54 dept'd	Time between trains
1	6:02p	7:00p	58"	5:20p	8:30a	missed
2	5:50p	7:00p	1' 10"	8:05a	8:30a	25"
3	6:00p	7:00p	1'	8:05a	8:30a	25"
4	6:02p	7:00p	58"	8:55a	8:30a	missed
5	5:59p	7:00p	1' 1"	8:50a	9:07a	17"
6	5:50p	7:00p	1' 10"	8:30a	8:52a	22"
7	5:50p	7:00p	1' 10"	8:05a	8:30a	25"
8	7:05p	7:12p	7"	8:05a	8:45a	40"
9	5:50p	7:00p	1' 10"	8:05a	8:30a	25"
10	6:20p	7:30p	1' 10"	8:05a	8:30a	25"
11	6:00p	7:00p	1'	8:05a	8:30a	25"
12	6:40p	7:00p	20"	8:05a	8:30a	25"
13	5:50p	7:00p	1' 10"	8:05a	8:30a	25"
14	6:20p	7:00p	40"	8:05a	8:30a	25"
15	6:45p	7:00p	15"	8:42a	9:02a	20"
16	5:55p	7:00p	1' 5"	8:05a	8:30a	25"
17	5:50p	7:00p	1' 10"	8:05a	8:30a	25"
18	6:40p	7:00p	20"	8:40a	9:02a	22"
19	5:50p	7:00p	1' 10"	8:20a	8:44a	24"
20	5:55p	7:00p	1' 5"	8:05a	8:30a	25"
21	5:50p	7:00p	1' 10"	8:05a	8:30a	25"
22	6:20p	7:00p	40"	8:05a	8:30a	25"
23	5:50p	7:00p	1' 10"	8:05a	8:30a	25"
24	5:50p	7:00p	1' 10"	8:05a	8:30a	25"
25	6:25p	7:00p	35"	8:05a	8:30a	25"
26	5:50p	7:00p	1' 10"	8:45a	9:04a	19"
27	6:05p	7:00p	55"	8:10a	8:35a	25"
28	6:05p	7:00p	55"	8:05a	8:30a	25"
29	5:50p	7:00p	1' 10"	9:05a	9:25a	20"
30	5:50p	7:00p	1' 10"	8:05a	8:30a	25"
31	6:05p	7:00p	55"	8:05a	8:30a	25"

[fol. 2786] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF KENTUCKY, LOUISVILLE DIVISION

Action No. 706

THE STATE OF ALABAMA and PUBLIC SERVICE COMMISSION, Plaintiffs,

versus

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, Defendants

Action No. 707

THE STATE OF TENNESSEE and THE RAILROAD AND PUBLIC UTILITIES COMMISSION OF THE STATE OF TENNESSEE, Plaintiffs,

versus

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, Defendants

Action No. 708

COMMONWEALTH OF KENTUCKY, and RAILROAD COMMISSION OF KENTUCKY, Plaintiffs,

versus

UNITED STATES OF AMERICA, Defendant

Findings of Fact and Conclusions of Law—Filed August 3, 1944

FINDINGS OF FACT

1. On June 1st, 1936 the Interstate Commerce Commission found in a proceeding then duly pending before it that the basic fare of 3.6 cents per passenger mile on interstate passenger coach travel in the territory south of the Ohio and Potomac Rivers and east of the Mississippi River was unreasonable to the extent that it exceeded 2 cents per passenger mile. Pursuant to said findings the basic interstate [fol. 2787] coach fare was on June 1st, 1936 reduced from 3.6 cents to 2 cents per passenger mile.

2. The Interstate Commerce Commission by order of January 21, 1942 in a proceeding properly pending before it authorized an increase of 10% in the interstate passenger coach fares effective February 10, 1942, thus raising the interstate passenger coach fare to 2.2 cents per passenger mile.

3. Shortly after October 1, 1942 the southern railroads filed with the Public Service Commission of Alabama, the Railroad and Public Utilities Commission of Tennessee and the Railroad Commission of Kentucky certain traffic schedules to become effective December 1, 1942, designed to raise the intrastate passenger coach fares in the respective states to the level of the corresponding interstate fares. Each State Commission held an investigation and hearing and in each instance found that the evidence presented did not justify the increase sought. The proposed increases were denied in each instance.

4. On March 17, 1943 the railroads operating in Alabama filed with the Interstate Commerce Commission a petition seeking an investigation under Sections 3, 13 and 15 of the Interstate Commerce Act of intrastate passenger coach fares in Alabama. On June 24, 1943 the Kentucky railroads instituted similar proceedings before the Interstate Commerce Commission for authority to permit increases in Kentucky intrastate passenger coach fares, and at approximately that time the Tennessee railroads also instituted such proceedings with respect to the intrastate coach fares in Tennessee. The Interstate Commerce Commission consolidated all the proceedings before it, and after taking evidence and holding hearings issued its report and findings on March 25, 1944 under the style and docket number of Alabama Intrastate Fares No. 28963. The Commission found that the interstate coach fares in effect in Alabama, Kentucky and Tennessee were just and reasonable; that the intrastate coach fares in said states were lower than the corresponding fares applicable interstate and intrastate [fol. 2788] generally throughout southern territory; that the conditions affecting transportation of passengers in coaches within these three states, intrastate on the one hand, and interstate to, from, and through these states on the other, were substantially similar; that interstate passengers in these states traveled in the same train and generally in the same cars with intrastate passengers, but were forced to

pay higher fares than the intrastate passengers for like services; that the railroad's revenues under the lower intrastate fares were less by at least $725,000 per annum in Alabama, $500,000 in Kentucky, and $525,000 in Tennessee than they would be if those fares were increased to the level of the corresponding interstate fares, and that traffic moving under these lower intrastate fares was not contributing its fair share of the revenues required to enable the railroads to render adequate and efficient transportation service; that the maintenance of intrastate coach fares in these states to the extent that such fares are on a lower level than the corresponding interstate fares caused and would cause undue, unreasonable and unjust discrimination against interstate commerce, and that this unlawfulness should be removed by increasing the intrastate fares in the respective states to the level of the corresponding interstate fares contemporaneously maintained by the railroads to, from, and through such states.

5. Thereafter by order dated May 8, 1944 in said consolidated proceedings the Interstate Commerce Commission ordered the railroads operating in Alabama, Tennessee and Kentucky to cease on or before July 1, 1944 from practicing the unjust discrimination found by it to exist; and thereafter to maintain and apply passenger fares for intrastate transportation in the respective states on bases no lower than the passenger fares then maintained and applied by the railroads for like accommodations in interstate transportation to, from and through the respective states. The effective date of this order was thereafter postponed until August 15, 1944.

6. The said Findings of the Interstate Commerce Commission in Alabama Intrastate Fares No. 28963 are supported by substantial evidence.

[fol. 2789] CONCLUSIONS OF LAW.

1. The order of the Interstate Commerce Commission of May 8, 1944 which is sought to be set aside in these proceedings is an authorized and valid order, correctly applies the proper principles of law to the facts so found by it and approved in these proceedings, and is not arbitrary and unreasonable.

2. The Interstate Commerce Commission properly required on the evidence before it and its findings of fact substantially supported by said evidence that the railroads operating in Alabama, Tennessee and Kentucky establish and maintain intrastate coach fares for passengers on bases no lower than the existing interstate fares.

Wisconsin Ry. Commission v. C. B. & Q. R. R. Co. 257 U. S. 563;
New York v. United States 257 U. S. 591;
United States v. Louisiana 290 U. S. 70;
Florida v. United States 292 U. S. 1;
Illinois Commerce Commission v. United States 292 U. S. 474;
Vinson v. Washington Gas Co. 321 U. S. 489;
Interstate Commerce Commission et al. v. The City of Jersey City et al. U. S. Supreme Court, May 29, 1944.

3. The injunction prayed for in each of the three actions is denied and the proceedings should be dismissed in each instance.

Elwood Hamilton, U. S. Circuit Judge, Sixth Circuit, Mac Swinford, U. S. District Judge, Eastern and Western Districts of Kentucky, Shackelford Miller, Jr., U. S. District Judge, Western District of Kentucky.

August 3rd, 1944.

[fol. 2790] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF KENTUCKY, LOUISVILLE DIVISION

Action No. 706

THE STATE OF ALABAMA and PUBLIC SERVICE COMMISSION, Plaintiffs,

versus

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, Defendants

Action No. 707

THE STATE OF TENNESSEE and the RAILROAD AND PUBLIC UTILITIES COMMISSION OF THE STATE OF TENNESSEE, Plaintiffs,

versus

UNITED STATES OF AMERICA and the INTERSTATE COMMERCE COMMISSION, Defendants

Action No. 708

COMMONWEALTH OF KENTUCKY, and RAILROAD COMMISSION OF KENTUCKY, Plaintiffs,

versus

UNITED STATES OF AMERICA, Defendant

On Application for Injunction

Argued July 17, 1944 Decided August 3rd, 1944

Before Hamilton, Circuit Judge, and Swinford and Miller, District Judges

Wm. N. McQueen, Acting Attorney General and Forman Smith, Assistant Attorney General for the State of Alabama and Alabama Public Service Commission; Leon Jourolman, Jr., for the State of Tennessee and the Railroad and Public Utilities Commission of the State of Tennessee; Eldon S. Dummitt, Attorney General, M. B. Holifield, Assistant Attorney General and J. E. Marks for the Commonwealth of Kentucky and the Railroad Commission of Ken-

[fol. 2791] tucky; Daniel W. Knowlton, Chief Counsel and Allen Crenshaw, Attorney, for Interstate Commerce Commission; W. L. Grubbs, E. A. Smith, Charles Clark, Jos. P. Cook, Y. D. Lott, H. L. Walker and Frank W. Gwathmey for the Intervening Railroads; Richard H. Field, General Counsel, David F. Covers, Assistant General Counsel, Bernard H. Fitzgerald, Transportation Counsel and M. D. Miller, Attorney for Economic Stabilization Director and the Price Administrator; Eli H. Brown, III, United States District Attorney, and Robert L. Pierce, Special Assistant to the Attorney General, for the United States of America.

OPINION—Filed August 3, 1944

MILLER, District Judge:

The State of Alabama, the State of Tennessee, and the Commonwealth of Kentucky filed these respective actions on June 12, 1944 against the United States of America and the Interstate Commerce Commission to enjoin and set aside an order entered by the Interstate Commerce Commission on May 8, 1944 which required the railroads operating in those three states to establish on or before July 1, 1944 certain minimum intrastate fares for transportation of persons in railway coaches which would raise said intrastate fares in the respective states to the level of corresponding interstate fares contemporaneously maintained by the railroads to, from and through such states. The Interstate Commerce Commission has postponed the effective date of its order to August 15, 1944 to provide a reasonable opportunity for a hearing and consideration by the Court of the issues presented. In compliance with the provisions of 28 USCA, Section 47 a three-judge court was duly convened, which after consolidating the three actions by agreement of the parties held the prescribed hearing. The matter is submitted for final judgment.

For many years prior to 1936 the basic interstate passenger coach fare of Class 1 American railroads was 3.6 cents per passenger mile. However, during the period of from December 1, 1933 through November 14, 1937 most of the railroads operating in the territory south of the Ohio and Potomac Rivers and east of the Mississippi River published and maintained an interstate passenger coach fare of 1.5 cents per passenger mile for one-way trips, and a [fol. 2792] 10% lower fare or 1.35 cents per passenger mile

for round trips. During this same period other southern railroads maintained an interstate passenger coach fare of 2 cents per passenger mile. In a proceeding known as Docket 26550, Passenger Fares and Surcharges, decided February 28, 1936, and reported in 214 ICC 174, the Interstate Commerce Commission found that the basic fare of 3.6 cents per passenger mile on interstate passenger coach travel was unreasonable to the extent that it exceeded 2 cents per passenger mile. In the same proceeding the Commission found that the interstate coach fare then being maintained and charged by some of the southern railroads, of 1.5 cents one-way and 1.35 cents round-trip was not unreasonable. Pursuant to the findings in that proceeding the basic interstate coach fare was reduced from 3.6 cents to 2 cents per passenger mile on June 1, 1936. In a proceeding known as Ex Parte 148, Increased Railway Rates, Fares and Charges, 1942, 242 ICC 545, the Commission by order of January 21, 1942 authorized an increase of 10% in the interstate passenger coach fares effective February 10, 1942, thus raising the interstate passenger coach fare to 2.2 cents per passenger mile. This increase was for the purpose of taking care of increased expenses of the railroads incident to the war period and was limited to the duration of the war and six months thereafter. The southern railroads which had been charging since December 1933 interstate passenger coach fares of 1.5 cents one-way and 1.35 cents round-trip increased these fares on November 15, 1937 to 2 cents one-way and 1.8 cents round-trip, and on January 15, 1939 again reduced said fares to 1.5 cents one-way and 1.35 cents round-trip. Pursuant to the order in Ex Parte 148 Increased Railway Rates, Fares and Charges 242 ICC 545, these railroads on February 10, 1942 increased the fares 10%, which made them 1.65 cents one-way and 1.485 cents round-trip. On October 1, 1942 these fares were again increased to 2.2 cents one-way and 1.98 cents round-trip, which fares are still in effect.

Shortly after October 1, 1942 when the railroads increased their interstate passenger fares to 2.2 cents per mile they filed with the Public Service Commission of Alabama, the Railroad and Public Utilities Commission of Tennessee [fol. 2793] and the Railroad Commission of Kentucky certain tariff schedules to become effective December 1, 1942 designed to raise the intrastate passenger coach fares in

the respective states to the level of the corresponding interstate fares. Each State Commission held an investigation and hearing. The Public Service Commission of Alabama found that the railroads had failed to show that they needed any additional revenue, that on the contrary they had ample revenue to take care of their operating expenses and in addition earn a reasonable return on their investments, and that the difference between interstate and intrastate fares did not create any unreasonable discrimination or undue prejudice. The Railroad and Public Utilities Commission of Tennessee found that the carriers had presented no evidence which would justify the increase sought by them and ordered that the existing fares be maintained as just and reasonable. The Railroad Commission of Kentucky found that the proposed increases in coach fares within that state were not shown by the evidence to be just and reasonable, and that while the uniformity sought by the railroads between the interstate and intrastate fares was desirable, uniformity alone was not a sufficient justification for the substantial increases proposed in the coach fares. The proposed increases were denied in each instance.

On March 17, 1943 the railroads operating in Alabama filed with the Interstate Commerce Commission a petition seeking an investigation under Sections 3, 13 and 15 of the Interstate Commerce Act of intrastate passenger coach fares in Alabama. On June 24, 1943 the Kentucky railroads instituted similar proceedings before the Interstate Commerce Commission for authority to permit increases in Kentucky intrastate passenger coach fares, and at approximately that time the Tennessee railroads also instituted such proceedings with respect to the intrastate coach fares in Tennessee. The Alabama, Kentucky and Tennessee proceedings were docketed respectively as No. 28963, No. 29000, and No. 29037. The railroads operating in North Carolina filed similar proceedings which were docketed under No. 29036, but the ruling hereinafter referred to with respect to the rates in North Carolina is not involved in the three cases now before this Court. The Interstate Commerce Commission consolidated all of the proceedings before it. After taking evidence and holding hearings the Commis- [fol. 2794] sion on March 25, 1944 issued its report and findings under the style and docket number of Alabama Intrastate Fares No. 28963. Specific findings were made as follows:

"1. The interstate one-way and round trip coach fares now in effect to, from, and through points in Alabama, Kentucky, North Carolina and Tennessee, and the interstate round-trip fares applicable in sleeping and parlor cars now in effect to, from, and through points in Alabama and Tennessee, are just and reasonable.

2. The intrastate one-way and round-trip coach fares in Alabama, Kentucky, North Carolina, and Tennessee, with certain exceptions hereinbefore referred to and not here in issue, and the intrastate round-trip fares applicable in sleeping and parlor cars in Alabama and Tennessee, are lower than the corresponding fares applicable interstate and intrastate generally throughout southern territory, except in the several States mentioned in this finding.

3. The conditions affecting the one-way and round-trip transportation of passengers in coaches within these four States, and the round-trip transportation of passengers in sleeping and parlor cars within Alabama and Tennessee, intrastate on the one hand, and interstate to, from, and through those respective States on the other, are substantially similar.

4. Interstate passengers in these States travel in the same train and generally in the same cars with intrastate passengers, but are forced to pay higher fares than the intrastate passengers for like services, to the undue and unreasonable advantage and preference of the intrastate passengers and the undue and unreasonable disadvantage and prejudice of the interstate passengers.

[fol. 2795] 5. Respondents' revenues under the lower intrastate fares are less by at least $725,000 per annum in Alabama, $500,000 in Kentucky, $525,000 in North Carolina, and $525,000 in Tennessee than they would be if those fares were increased to the level of the corresponding interstate fares, and traffic moving under these lower intrastate fares is not contributing its fair share of the revenues required to enable respondents to render adequate and efficient transportation service.

6. The maintenance of intrastate one-way and round-trip coach fares in Alabama, Kentucky, North Carolina, and Tennessee, and of intrastate round-trip fares applicable in sleeping and parlor cars in Alabama and Tennessee, to the extent that such fares are on a lower level than the corresponding interstate fares, causes and will cause undue and unreasonable advantage to and preference of persons in intrastate commerce, undue and unreasonable disadvantage to and prejudice against persons in interstate commerce, and undue, unreasonable, and unjust discrimination against interstate commerce; and this unlawfulness should be removed by increasing the aforesaid intrastate fares in the respective States to the level of the corresponding interstate fares contemporaneously maintained by respondents to, from and through such States; provided, that the aggregate charge made by any of the respondents for the intrastate transportation in any of the States shall not exceed the aggregate charge made for like accommodations and for a like distance by the same respondent for interstate transportation to, from, or through such State.

The foregoing findings are without prejudice to the right of the authorities of the affected States, or of any interested party, to apply for modification thereof [fol. 2796] as to any specific intrastate fare on the ground that such fare is not related to interstate fares in such a way as to contravene the provisions of the Interstate Commerce Act."

The Commission made no order at that time but stated—

"In accordance with our practice in such proceedings, we shall leave to respondents and the respective State Commissions the matter of adjusting the intrastate fares to conform to these findings. If this is not accomplished within 30 days from the service of this report, consideration will be given to the entry of an appropriate order."

The State Commissions of Alabama, Tennessee and Kentucky promptly filed applications for reconsideration which were denied by the Interstate Commerce Commission, following which a final corrected order was entered in said

proceedings dated May 8th, 1944. By this order the railroads operating in Alabama, Tennessee and Kentucky were ordered to cease and desist on or before July 1, 1944 "from practicing the undue prejudice and preference and the unjust discrimination found in said report to exist * * * and thereafter to maintain and apply passenger fares for intrastate transportation in the respective states which shall be on bases no lower than the passenger fares presently maintained and applied by the respective respondents for like accommodations in interstate transportation to, from, and through the respective States; provided, that the resulting aggregate charge made by any of said respondents for intrastate transportation in any of the states shall not exceed the aggregate charge made for like accommodations and for a like distance by the same respondents in interstate transportation to, from, or through such State." The three State Commissions thereafter filed these three actions in the United States District Court for the Western District of Kentucky, stating in each instance that the Louisville & Nashville Railroad Company, one of the carriers which filed the petitions before the Interstate Commerce Commission, is a Kentucky corporation with its residence and principal [fol. 2797] office in said Federal Judicial District. The complaints after stating the foregoing facts in detail allege that the corrected order of the Interstate Commerce Commission of May 8, 1944 constitutes an unwarranted and unjustified invasion of the sovereignty of the State in that it exceeds the powers granted to the Federal Congress by the Commerce Clause of Section 8 of Article 1 of the Constitution of the United States; that said order contravenes the Fifth and Tenth Amendments of said Constitution; that there was no evidence before the Commission to support the report, findings and order made by it; that the corrected order of May 8, 1944 is in contravention of the stabilization program of the Federal Government as embodied in the Emergency Price Control Act of 1942 and its Amendment of October 2, 1942; and that unless said order is set aside and annulled innumerable citizens in the respective states will suffer irreparable injury and damage in the form of excessive passenger fares in intrastate transportation and the respective State commissions will be deprived of their right to regulate intrastate commerce and intrastate passenger fares on railroads operating in said States. Fred M. Vinson, Director of the Office of Economic

Stabilization, through Chester Bowles, Price Administrator of the Office of Price Administration, moved to file, and was permitted to do so, an intervening petition in which he attacks the corrected order of May 8, 1944 as being invalid by reason of its failure properly to interpret and apply its constitutional and statutory authority to protect interstate commerce from undue and unreasonable burdens from intrastate commerce and also by its failure to accommodate the exercise of its powers to the congressional policies embodied in the Emergency Price Control Act of 1942 and the Stabilization Act of October 2, 1942. The Interstate Commerce Commission by its answers alleges that the proceedings, report and orders herein involved indirectly and collaterally related to previous consideration, decisions, and orders of the Commission in respect to the determination of reasonable passenger fares in interstate commerce particularly with reference to such fares in southern passenger association territory, generally located east of the Mississippi River and south of the Ohio and Potomac Rivers, such consideration and decisions covering a period of many years prior to the report involved in this action; that its findings and conclusions in its report of March 25, 1944 [fol. 2798] were fully supported and justified by the evidence submitted; and that the order of May 8, 1944 was not entered either abitrarily or unjustly or without evidence to support it and was within the authority conferred upon the Commission by law. The railroads' motions to intervene were sustained and they filed intervening answers adopting the answer filed on behalf of the Interstate Commerce Commission. The United States of America filed an answer pointing out that the proceedings presented a situation where one Government agency was opposing another Government agency, and in view of the fact that both Government agencies would have an opportunity to present their respective positions by their own counsel it would take a neutral position without prejudice to its later support of one or the other agency in any appeal that might be taken from the decree of the Court.

Jurisdiction of the District Court is conferred by Section 41 (28) Title 28 United States Code. The venue of the present suits in the United States District Court for the Western District of Kentucky is provided by Section 43, Title 28 United States Code. The procedure herein fol-

lowed is provided by Sections 44 through 48, Title 28 United States Code.

Section 15 of the Interstate Commerce Act (Section 15 Title 49 United States Code) empowers the Interstate Commerce Commission to make investigation and hold hearings following any complaint by an authorized party as to the reasonableness of any existing rate. If, following such investigation and hearing, the Commission is of the opinion that the rate is unjust or unreasonable or unjustly discriminatory or unduly preferential or prejudicial, it is authorized and empowered to determine and prescribe what will be the just and reasonable rate to be thereafter observed in such case. Section 13 of the Act (Section 13, Title 49 United States Code) authorizes any person, firm or corporation, or any common carrier or any State Railway Commission to make complaint to the Commission and have an investigation by the Commission of the matters complained of. It also authorizes the Commission to institute such an inquiry at any time on its own motion. Subsection 4 of Section 13 provides that whenever in any such investigation the Commission finds that any rate causes any undue or unreason-[fol. 2799] able advantage, preference, or prejudice as between persons or localities in intrastate commerce on the one hand and interstate commerce on the other hand, or any undue, unreasonable or unjust discrimination against interstate commerce, which is declared to be unlawful by the Act, it shall prescribe the rate thereafter to be charged in such manner as in its judgment will remove such advantage, preference, prejudice or discrimination, and that such rate shall be observed by the carrier, *the law of any State or the decision or order of any State authority to the contrary notwithstanding.* The State Commissions recognize the constitutionality of this legislation, which has been many times upheld, but they contend, and rightly so, that the power of the Commission to fix intrastate rates is limited to the two situations of (1) where the evidence shows a preference as between persons or localities in intrastate commerce on the one hand and interstate commerce on the other hand, and (2) where the evidence shows any unreasonable or unjust discrimination against interstate commerce. Any attempt on the part of the Interstate Commerce Commission to regulate intrastate rates where one of these two situations does not exist would be in conflict with the Tenth Amendment to the United States Constitution. Section 15 of the Interstate

Commerce Act imposed an affirmative duty on the Interstate Commerce Commission to fix rates and to take other important steps to maintain an adequate railway service for the people of the United States. Intrastate rates constitute a very important part in mainaining such an adequate national railway system. Gross revenue from intrastate transportation is a little less than one-third of the gross revenue from interstate transportation. If intrastate rates are fixed at a substantial lower level than interstate rates, the share which intrastate traffic will contribute will be proportionately less. If the railways are to earn a fixed net percentage of income, the lower the intrastate rates, the higher the interstate rates will have to be. The effective operation of the Act justly requires that intrastate traffic should pay a fair proportionate share of the cost of maintaining an adequate railway system. The Supreme Court has on numerous occasions recognized this dovetail relation between the purpose of Section 15 of the Act and the authority of the Commission under Section 13(4) of the [fol. 2800] Act to remove undue or unjust discrimination against interstate commerce. Accordingly, when that purpose is interfered with by a disparity of intrastate rates the Commission is authorized to end the disparity by a proper adjustment of the intrastate rates in question. Wisconsin Railroad Commission v. Chicago, Burlington and Quincy Railroad Co. 257 US 563; New York v. United States 257 US 591; Houston and Texas Ry. v. United States 234 US 342; Florida v. United States 292 US 1; United States v. Louisiana 290 US 70. Accordingly, the Interstate Commerce Commission was fully authorized and empowered to order the adjustment of purely intrastate rates in Alabama, Tennessee and Kentucky if the evidence introduced in the investigation and hearing proved the existence of either of the two situations above referred to.

In these proceedings it is not the province of the Court to review the evidence before the Commission for the purpose of making its own findings of fact. It is a well settled rule of administrative law that the functions of a reviewing court are limited to deciding whether or not there was sufficient evidence to support the findings of fact of the administrative board and whether or not the correct rule of law was applied to the facts so found. Although reasonable persons may differ with the findings of fact by the administrative board upon the evidence before it, yet if it

appears from the record that such findings are supported by substantial evidence the law makes the board's findings on such facts conclusive. The Interstate Commerce Commission, et al. v. The City of Jersey City, et al., U. S. Supreme Court May 29, 1944; Helvering v. National Grocery Company 304 US 282, 294; St. Joseph Stock Yards Company v. United States 298 US 38, 51; Ohio v. United States 292 US 498, 506; Interstate Commerce Commission v. Union Pacific R. Co. 222 US 541, 547. It naturally follows that if the administrative board applied the correct rule of law to the facts so found, its final order in the case must be affirmed. Federal Power Commission v. Natural Gas Pipeline Co. 315 US 575, 586; Helvering v. Rankin 295 US 123, 131; Virginian Ry v. United States 272 US 658, 663.

The validity of the Commission's order of May 8th, 1944 rests primarily upon the basic fact that interstate coach [fol. 2801] fares to, from and through the three states in question are just and reasonable. Unless that fact is first established there is no basis for a finding of discrimination against interstate commerce. Georgia Public Service Commission v. United States 283 US 765; United States v. Louisiana 290 US 70. The Commission so found in its first finding of fact. We review the record merely to determine if that finding is supported by substantial evidence. The Commission had before it evidence showing the history of both interstate and intrastate fares and the statistical data with respect to the principal railroads operating in Alabama, Tennessee nd Kentucky. It had, but recently completed a very extensive investigation of freight rates and passenger fares throughout the country in a proceeding before it docketed as Increased Railway Rates, Fares and Charges, 1942, 248 ICC 545, commonly referred to as Ex Parte 148. On January 21, 1942 it entered a preliminary order in that proceeding authorizing a general increase of 10% in passenger fares as proposed by the carriers, finding as it did so that the increase in fares proposed was necessary to enable the carriers to continue to render adequate and efficient railway transportation service during the present emergency, and that the evidence before it showed that the proposed increased fares were reasonable. This finding was renewed and affirmed in the later report of March 2, 1942. On January 4, 1943 the proceeding was reopened for further hearing in response to petitions filed by the Office of Price Administration, various state regula-

tory bodies and others, who claimed that the financial condition of the railroads had so improved since the original decision, chiefly by subsequent increase in the volume of traffic, as to render unnecessary the continuance of the increase previously authorized. Some of these protestants also claimed that the increases were inflationary in effect, and incompatible with the principles of the economic policy adopted by Congress to prevent inflation. Following the hearing of further evidence in that proceeding in February 1943, which included the latest available report of railroad earnings, as well as forecasts made by a witness of the Office of Price Administration respecting anticipated earnings for the entire year of 1943, the Commission suspended until January 1, 1944 the increases in freight charges previously authorized, and also cancelled the increases author- [fol. 2802] ized by transportation commutation fares, but declined to odify the previous increases in passenger fares. In its report of April 6, 1943 it pointed out that the evidence showed that passenger traffic had failed for many successive years to pay its proper share of railway expenses, and that only with the large volume of traffic and passenger revenue was the 1942 passenger deficit currently eliminated. It found that under then existing conditions the revenues received by the railroads for the remainder of 1943, if their freight rates and charges were so reduced, would meet the objectives of the national transportation policy as defined in the Interstate Commerce Act. On October 11, 1943 the Commission denied petitions filed by the Office of Price Administration and the Alabama and North Carolina Commissions seeking a further investigation of interstate passenger fares in the South. In a 3rd report in Ex Parte 142 dated November 8, 1943, and also in a 4th report in the same proceeding; dated May 8th, 1944, the suspension of freight rate increases was further successively extended to June 30, 1944 and then to December 31, 1944, but the increase in passenger coach fares was allowed to stand. The Commission in making its order of May 8, 1944 had this previous investigation before it and was not required for the purpose of making a finding in the three proceedings then pending before it to retrace or duplicate this work just recently and carefully completed. Administrative procedure necessarily results in the existence of a gap between the time when the record evidence is closed and the time the administrative decision is later promulgated, which

makes it possible and permissible for the Commission, in its discretion, to review or supplement its findings by consideration of evidence subsequently developing instead of rehearing the matter in its entirety. Illinois Commerce Commission v. United States 292 US 474, 480-481; Interstate Commerce Commission, et al. v. The City of Jersey City, et al., United States Supreme Court May 29, 1944. No doubt the Commission, if necessary, could have taken judicial notice of all of its previous rulings just referred to. Butler v. Eaton 141 US 240; Freshman v. Atkins 269 US 121; National Fire Insurance Co. v. Thompson 281 US 331, 336; Kelly v. Johnson 111 Fed. (2) 613, 615. But in any event such evidence was admissible in the administrative hearing, which is not bound by the strict and technical rules of evidence prevailing in common law trials. It ap- [fol. 2803] pears well settled that an administrative board has a much broader consideration of facts having a material bearing upon the issue presented than has a jury. Opp Cotton Mills v. Administrator 312 US 126, 154-155; Spiller v. Atchison T. and S. F. R. Co. 253 US 117; Interstate Commerce Commission v. Baird 194 US 25; United States v. Interstate Commerce Commission 290 Fed. 264; Tagg Bros. and Moorhead v. United States 280 US 420; Wigmore on Evidence 3rd Edition, Sections 4a and 4b and 4c (26 at Page 70). These previous investigations and conclusions were supplemented with current statistical data and evidence of increased operating costs largely attributable to war-time conditions. It is true that the same war-time conditions have greatly increased the revenues of the carriers, but it has been with resulting unusual wear and tear on equipment. The question presented was a complex one involving new and changing factors of indefinite duration. "The process of rate making is essentially empiric. The stuff of the process is fluid and changing—the resultant of factors that must be valued as well as weighed. Congress has therefore delegated the enforcement of transportation policy to a permanent expert body and has charged it with the duty of being responsive to the dynamic character of transportation problems." Board of Trade v. United States 314 US 534, 546. In our opinion the evidence was sufficient to sustain this finding of the Commission.

The 2nd and 5th findings of the Commission appear not to be seriously contested by the petitioners, and in any event are fully sustained by the evidence.

The 3rd and 4th findings of the Commission to the effect that the conditions affecting intrastate transportation in the three states on the one hand and interstate transportation to, from and through those respective states on the other hand are substantially similar, and that interstate passengers in these states travel in the same trains and generally in the same cars with the intrastate passengers, but are forced to pay higher fares than the intrastate passengers for the like service, are contested by the petitioners, but a review of the record discloses substantial evidence to [fol. 2804] support these findings. It is conceded by the railroads that the streamlined deluxe trains offer to the traveling public a much higher standard of service than other regular trains or so-called local trains, but in the great majority of cases the streamlined or deluxe trains are available to and actually carry both interstate passengers and intrastate passengers. In a few instances their schedules do not provide for but one regular stop within a state, which prevents the transportation of intrastate passengers within that state, but such a schedule is apparently necessary in order to provide that type of service, and considering both that fact and the relative insignificance of this type of transportation it can be largely disregarded in making the general findings referred to. That part of finding No. 4 which states that the payment by interstate passengers of a higher fare than is paid by the intrastate passengers is to the undue and unreasonable disadvantage and prejudice of the interstate passengers may or may not be sufficiently supported by the evidence to justify its finding, but in view of finding No. 6, hereinbelow referred to, it becomes unnecessary to decide that point.

The Commission found as finding No. 6 that the maintenance of the existing lower intrastate coach fares in Alabama, Tennessee, and Kentucky causes undue, unreasonable and unjust discrimination against interstate commerce, which should be removed by increasing intrastate fares in respective states to the level of the corresponding interstate fare to, from and through such states. The evidence showed that the disparity in rates causes the railroads' revenues to be substantially less than they would be if the intrastate fares were increased to the interstate fare level, and that this disparity is such that passengers destined to points outside the respective states were encouraged to purchase intrastate tickets to points near the state line and

then either buy tickets or pay cash for the remainder of the journey, thus using the lower intrastate fare to defeat the higher interstate fare. The two classes of traffic are inextricably intermingled; the same railways and the same cars carry both passengers; the same men operate the train in its intrastate journey and in its interstate journey. [fol. 2805] Under such conditions the effect of maintaining a materially lower rate intrastate than the reasonable interstate rate necessarily results in intrastate traffic failing to pay a fair proportionate share of the cost, maintenance and operation and is discriminatory against interstate traffic. Wisconsin Railway Commission v. C. B. & Q. R. R. Co. 257 US 563; New York v. United States 257 US 591; United States v. Louisiana 290 US 70; Florida v. United States 292 US 1; Illinois Commerce Commission v. United States 292 US 474. The existence of such discrimination against interstate commerce, regardless of the non-existence of any advantage as between persons or localities is sufficient justification for the Commission to end the disparity by ordering it removed.

Petitioners contend that existing rates yield sufficient revenue to constitute a reasonable return to the carriers, that the additional revenue from raising the intrastate rates is not necessary, and that the resulting total revenue will be materially more than the carriers are legally entitled to receive. That may be the result, at least temporarily. But the proposed increased rates are not based on the need for additional revenue. The proposed increase is for the purpose of removing an unjust discrimination against interstate commerce which the Commission is empowered to do regardless of resulting increased revenues or the non-existence of any need for the same. It may be that later, after the increase has had time to show its effect, a downward revision of both interstate and intrastate rates will be in order to meet this objection. On the other hand, present large revenues flow from abnormal traffic conditions, clearly only temporary in their nature. With the return to normal conditions, including the resumption of strong competition from trucks and busses, the combined returns may not be unreasonable. Rate making is not confined to a consideration of results from a single calendar year or from a temporary abnormal condition. The Supreme Court recently held that the

present bulge of war earnings is unreliable for use as a standard. Group of Institutional Investors v. Chicago, Milwaukee, St. P. and P. R. Co. 318 U. S. 523, 543. It is approved administrative practice to consider conditions [fol. 2806] over a reasonable period of years, to strike an average in determining a basis for rate making. St. Joseph Stock Yards Co. v. United States 298 U. S. 38, 46-47; South and North Alabama R. Co. v. Railroad Commission 210 Fed. 465, 480.

The Economic Stabilization Director and the Price Administrator contend that in addition to the Commission's failure properly to interpret and apply its constitutional and statutory authority to protect interstate commerce from undue burdens from intrastate commerce the Commission has failed to accommodate the exercise of its powers to the congressional policies embodied in the Emergency Price Control Act of 1942 and the Stabilization Act of October 2, 1942, and that by reason thereof its order of May 8, 1944 is null and void. This brings into consideration the statutory authority under which these intervenors attack the order in question and their standing in the proceedings. Section 302(c) of the Emergency Price Control Act of 1942 (50 U. S. C. A. Section 942(c)) provides:

> "Nothing in this Act shall be construed to authorize the regulation of * * * rates charged by any common carrier or other public utility."

Compare Davies Warehouse Co. v. Bowles 321 US 144. The Emergency Price Control Act was supplemented by the Act of October 2, 1942 which provides:

> "That no common carrier or other public utility shall make any general increase in its rates or charges which were in effect on September 15, 1942, unless it first gives 30 days notice to the President, or such agency as he may designate, and consents to the timely intervention by such agency before the Federal, State, or Municipal authority having jurisdiction to consider such increase." 50 U. S. C. A. Section 961.

While this language confers upon the executive the right to notice by the utility and requires the utility's consent that the executive be heard by the regulatory body, yet it has been held that in the absence of a clear legislative

mandate to the contrary such intervenors do not possess any greater rights than other intervenors, and that Con-
[fol. 2807] gress did not intend to limit in any way the existing power of the Interstate Commerce Commission over rate increases, or to give the Price Administrator any standing to make mandatory demands upon it or to take from it any part of its existing discretion. Vinson v. Washington Gas Company 321 U. S. 489; Interstate Commerce Commission et al. v. The City of Jersey City et al., U. S. Supreme Court decided May 29, 1944. In the Jersey City case above referred to the Court specifically stated that the opinion of the Price Administrator is not mandatory on the Commission; that the weight to be given to the Price Administrator's contentions called for an exercise of judgment by the Commission and was for the Commission, not for the Court, to determine; that the Interstate Commerce Commission has the responsibility for maintaining an adequate system of wartime transportation, which is a very intricate problem involving many variable factors and calling for informed, expert and unbiased judgment; and that the decision of such a matter by the Commission is clearly not reviewable by the Court because it thinks differently of the weight which should be accorded by some factors in relation to others. In the hearings now under consideration, the Price Administrator was given the required notice and was afforded the opportunity of introducing evidence and of being heard. The report of the Commission refers to his evidence and to his contentions. He has accordingly had the hearing and consideration that the statute provides. He has no standing now in this Court to complain that because his views and contentions were not adopted by the Commission the Commission's order is void and of no effect. His intervention in the three cases presents no additional question to those already discussed.

In our opinion the corrected order of the Interstate Commerce Commission of May 8, 1944, herein complained of, was within the power of the Commission and properly ap-
[fol. 2808] plied the law to its findings of fact; that these findings of fact are supported by substantial evidence; and that the order is accordingly a valid one which this Court is not authorized to review any further than as hereinabove indicated. Accordingly, the injunction prayed for

in each case is denied and the respective complaints will be dismissed.

Shackelford Miller, Jr., U. S. District Judge, Western District of Kentucky.

[fol. 2809] [File endorsement omitted]

In United States District Court for the Western District of Kentucky, Louisville Division

Action No. 706

The State of Alabama and Public Service Commission, Plaintiffs,

versus

United States of America and Interstate Commerce Commission, Defendants

Action No. 707

The State of Tennessee and The Railroad and Public Utilities Commission of the State of Tennessee, Plaintiffs,

versus

United States of America, and Interstate Commerce Commission, Defendants

Action No. 708

Commonwealth of Kentucky and Railroad Commission of Kentucky, Plaintiffs,

versus

United States of America, Defendant

Decree—Filed August 3, 1944

These actions having been consolidated and having been heard before the undersigned, constituting a Special District Court of three judges convened pursuant to Title 28 United States Code Section 47, and said Court having considered the evidence taken before the Interstate Commerce

Commission and the report of said Commission in each case, and having considered the arguments and briefs of respective counsel, and the consolidated cause having been submitted for final judgment, and the Court being sufficiently advised and having made its findings of fact and conclusions of law which are filed herein:

Now, Therefore in accordance with such findings of fact and conclusions of law and for the reasons given by the [fol. 2810] Court in its opinion of this date filed herein,

It Is Ordered, Adjudged and Decreed that the injunction prayed for in each action be denied, and that each of said complaints be and is hereby dismissed.

This 3rd day of August, 1944.

Elwood Hamilton, U. S. Circuit Judge for Sixth Circuit; Mac Swinford, U. S. District Judge, Eastern and Western Districts of Kentucky; Shackelford Miller, Jr., U. S. District Judge, Western District of Kentucky.

[fol. 2811] Clerk's Certificate to transcript omitted in printing.

[fol. 2812] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Titles omitted]

NOTICE OF APPEAL—Filed September 1, 1944

To United States of America and Interstate Commerce Commission, Defendants, and Fred M. Vinson, Economic Stabilization Director, by Chester Bowles, Price Administrator, The Alabama Great Southern Railroad Company; Atlanta, Birmingham and Coast Railroad Company, Atlantic Coast Line Railroad Company, Carolina, Clinchfield Railway of South Carolina, (Atlantic Coast Line Railroad Company and Louisville and Nashville Railroad Company, Lessees), Central of Georgia Railway Company, The Chesapeake and Ohio Railway Company, The Cincinnati, New Orleans and Texas Pacific Railway Company, Gulf, Mobile and Ohio Railroad Company, Illinois Central Railroad Company, Louisville and Nashville Railroad Company; The Nashville, Chattanooga & St. Louis Railway, St. Louis-San Francisco Railway Company (J. M. Kurn and Frank A. Thompson, Trustees), Seaboard Air Line Railway Company (L. R. Powell, Jr., and Henry W. Anderson, Receivers), Southern Railway Company, Tennessee, Alabama & Georgia Railway Company, Tennessee Central Railway Company, The Western Railway of Alabama and The Yazoo and Mississippi Valley Railroad Company, Intervenors

Please take notice that, pursuant to the statutes and rules of court in such cases made and provided, The State of Alabama and Public Service Commission, The State of Tennessee and the Railroad and Public Utilities Commission of the State of Tennessee, Commonwealth of Kentucky and Railroad Commission of Kentucky, Plaintiffs in the [fol. 2813] above-entitled actions, and each of them, do hereby appeal to the Supreme Court of the United States from the final order and decree of the District Court of the Untied States of the Western District of Kentucky (Louisville Division) made and entered on the 3rd day of August, 1944, denying the injunction sought to restrain and set aside the corrected order of Interstate Commerce Commission of May 8, 1944, in Dockets Nos. 28963, Alabama Intra-

state Fares; 29000, Kentucky Intrastate Fares; and 29037, Tennessee Intrastate Fares, 258 I.C.C. 133, and dismissing petitions or complaints of said Plaintiffs, wherein the Commission, after hearing, ordered an increase in the intrastate passenger coach fares in Alabama, Tennessee and Kentucky as prescribed by the Regulatory commissions of said states.

William N. McQueen, Acting Attorney General; Forman Smith, Assistant Attorney General, Attorneys for The State of Alabama and Public Service Commission. Leon Jourolmon, Jr., Attorney for The State of Tennessee and the Railroad and Public Utilities Commission of the State of Tennessee. Eldon S. Dummit, Attorney General of the Commonwealth of Kentucky. M. B. Holifield, Assistant Attorney General of the Commonwealth of Kentucky; J. E. Marks, Attorneys for Commonwealth of Kentucky and Railroad Commission of Kentucky.

Dated September 1, 1944.

[fol. 2814] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

(Titles omitted)

PETITION FOR APPEAL—Filed September 1, 1944

To the Honorable the Judges Above-named:

The State of Alabama and Public Service Commission, The State of Tennessee and the Railroad and Public Utilities Commission of the State of Tennessee, Commonwealth of Kentucky and Railroad Commission of Kentucky, plaintiffs in the above-styled actions, considering themselves aggrieved by the final decree made and entered in the above-entitled actions on August 3, 1944, said actions being con-
[fol. 2815] solidated for the purpose of said hearing and decree, do hereby appeal therefrom to the Supreme Court of the United States for the reasons set forth in the Assignment of Errors filed herewith and on the basis of the Supreme Court's jurisdiction upon appeal to review said

order and decree as shown in the Jurisdictional Statement also filed herewith, and pray that the plaintiffs in Actions Nos. 706, 707 and 708 be permitted to appeal jointly from the joint decree rendered in said actions and that the Court approve said joint appeal; that a proper order be entered relating to the appeal bond to be given by said plaintiffs; that a citation be issued as provided by law; and that a transcript of the record, proceedings and papers (or, so far as the Court may direct, the original record in lieu of such transcripts) upon which said decree is based, duly authenticated, be sent to the Supreme Court of the United States in accordance with the rules in such cases provided.

William N. McQueen, Acting Attorney General; Forman Smith, Assistant Attorney General, Attorneys for The State of Alabama and Public Service Commission. Leon Jourolmon, Jr., Attorney for The State of Tennessee and the Railroad and Public Utilities Commission of the State of Tennessee. Eldon S. Dummit, Attorney General of the Commonwealth of Kenutcky; M. B. Holifield, Assistant Attorney General of the Commonwealth of Kentucky; J. E. Marks, Attorneys for Commonwealth of Kentucky and Railroad Commission of Kentucky.

Dated September 1, 1944.

[fol. 2816] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

ASSIGNMENT OF ERRORS—Filed September 1, 1944

The State of Alabama and Public Service Commission, The State of Tennessee and the Railroad and Public Utilities Commission of the State of Tennessee, Commonwealth of Kentucky and Railroad Commission of Kentucky, plaintiffs in the above-styled actions, file the following Assignment of Errors with and as part of their petition for appeal to the Supreme Court of the United States from the final decree of the District Court, entered August 3, 1944,

in which the Court (1) refused to enjoin, set aside or annul the corrected order of the Interstate Commerce Commission, dated May 8, 1944, in its Dockets Nos. 28963, Alabama Intrastate Fares; 29000, Kentucky Intrastate Fares; and 29037, Tennessee Intrastate Fares; in so far as said order required increases in the intrastate fares of [fol. 2817] Alabama, Kentucky and Tennessee, respectively, and (2) ordered and decreed that the above-entitled actions and each of them be dismissed.

Plaintiffs assert that the District Court in its decree, findings of fact, and conclusions of law erred in the following respects:

I. The Court erred in refusing to enjoin, set aside and annul said order of the Interstate Commerce Commission.

II. The Court erred in refusing to enjoin, set aside and annul said order of the Interstate Commerce Commission on the ground that said order was not based on adequate findings by the Commission supported by substantial evidence before the Commission.

III. The Court erred in dismissing the above-entitled complaints and each of them, and in denying the relief sought in such complaints.

IV. The Court erred in its Finding of Fact No. 1; in that such finding purports to find that the interstate passenger coach fares in the territory south of the Ohio and Potomac Rivers and east of the Mississippi River, were reduced from 3.6 cents to 2 cents per passenger mile on June 1, 1936, pursuant to findings of the Interstate Commerce Commission in a proceeding then pending before it. The record before the Court shows that most of the railroads in said southern territory maintained a passenger coach fare of 1.5 cents per passenger mile, and other railroads a fare of 2 cents, during the period from December 1, 1933 to February 9, 1942, inclusive, except that during the 14 months from November 15, 1937 to January 14, 1939, inclusive, the passenger coach fares on all of said railroads were 2 cents per passenger mile. The record further shows that the Interstate Commerce Commission in the 1936 proceeding found that the passenger coach fare of 1.5 cents per passenger mile then being maintained by most southern railroads was not unreasonable, or otherwise unlawful.

V. The Court erred in Finding of Fact No. 2, in that such finding purports to find that the interstate passenger coach fares of the southern railroads were increased 10 per cent from 2 cents to 2.2 cents per passenger mile effective February 10, 1942, by an order of the Interstate Commerce Commission of January 21, 1942 in a proceeding properly pending before it. The record before the [fol. 2818] Court shows that the 10 per cent increase authorized by said order was limited to the interstate passenger fares then being charged by the railroads and as published in their tariffs, that the interstate passenger coach fares of most southern railroads were only increased from 1.5 to 1.65 per passenger mile under said order, and that said fares of 1.65 cents were maintained until October 1, 1942, when they were increased to 2.2 cents per passenger mile over the protest of the Office of Price Administration and without any hearing by the Interstate Commerce Commission.

VI. The Court erred in its Finding of Fact No. 4, in that such finding purports to find that the Interstate Commerce Commission consolidated its investigations of the Alabama, Kentucky and Tennessee intrastate passenger fares under the style and docket number of Alabama Intrastate Fares No. 28963. The record before the Court shows that the three proceedings, namely, Docket No. 28963, Alabama Intrastate Fares; Docket No. 29000, Kentucky Intrastate Fares; and Docket No. 29037, Tennessee Intrastate Fares; were heard separately upon separate records and at different times and places, that separate briefs therein were filed, that separate proposed reports were issued in the Alabama and Kentucky cases, in which the examiner recommended dismissal of said cases, and that no proposed report was issued in the Tennessee case. Only at oral argument were the cases heard together and a single report and order rendered therein.

VII. The Court erred in its Finding of Fact No. 6, in that such finding purports to find that the findings of the Interstate Commerce Commission in its report of March 25, 1944 in Dockets Nos. 28963, Alabama Intrastate Fares; 29000, Kentucky Intrastate Fares; and 29037, Tennessee Intrastate Fares; are supported by substantial evidence.

VIII. The Court erred in holding as a conclusion of law that said order of the Interstate Commerce Commission of

May 8, 1944, is an authorized and valid order, that it correctly applied the proper principles of law to the facts so found by it, and that it is not arbitrary or unreasonable.

IX. The Court erred in holding as a conclusion of law that the Interstate Commerce Commission properly required on the evidence before it, and its findings of fact, that the [fol. 2819] railroads operating in Alabama, Tennessee and Kentucky establish and maintain intrastate coach fares for passengers on bases no lower than the existing interstate fares.

X. The Court erred in holding as a conclusion of law that the injunctions prayed for in the actions named above, and each of them, should be denied and the proceedings dismissed.

XI. The Court erred in finding as a fact (Sheet 10 of mimeographed opinion) that "Gross revenue from intrastate transportation is a little less than one-third of the gross revenue from interstate transportation."

XII. The Court erred in finding as a fact (Sheet 14) that the findings and orders of the Interstate Commerce Commission in Increased Railway Rates, Fares and Charges, 1942, 248 I. C. C. 545, *et seq.*, commonly referred to as Ex Parte 148, "supplemented with current statistical data and evidence of increased operating costs largely attributable to war-time conditions," was sufficient evidence to sustain the Commission's first finding of fact, namely, that the interstate coach fares to, from and through the states of Alabama, Kentucky and Tennessee, are just and reasonable.

XIII. The Court erred in finding as a fact (Sheet 14) that "The 2nd and 5th findings of the Commission appear not to be seriously contested by the petitioners, and in any event are fully sustained by the evidence."

XIV. The Court erred in finding as a fact (Sheet 14) that "a review of the record discloses substantial evidence to support these findings," namely, those portions of the 3rd and 4th findings of the Commission, wherein the Commission found that the conditions affecting the transportation of passengers in coaches within the three states involved, intrastate on the one hand, and interstate to, from and through these states on the other, were substantially similar.

XV. The Court erred in finding as a fact (Sheet 15) that the evidence showed that the disparity between the interstate and intrastate fares "is such that passengers destined to points outside the respective states were encouraged to purchase intrastate tickets to points near the state line and then either buy tickets or pay cash for the remainder of the journey, thus using the lower intrastate fares to defeat the higher interstate fare." Such practices, if they exist, are [fol. 2820] illegal.

XVI. The Court erred in holding as a conclusion of law (Sheets 15 and 16) that "Under such conditions (intermingling of interstate and intrastate passengers on same trains and in same cars) the effect of maintaining a materially lower rate intrastate than the reasonable interstate rate necessarily results in intrastate traffic failing to pay a fair proportionate share of the cost, maintenance and operation and is discriminatory against interstate traffic. * * * The existence of such discrimination against interstate commerce, regardless of the non-existence of any advantage as between persons or localities is sufficient justification for the Commission to end the disparity by ordering it removed."

XVII. The Court erred in holding as a conclusion of law (Sheet 16) that the Interstate Commerce Commission is empowered to remove unjust discrimination against interstate commerce by increasing intrastate fares "regardless of resulting increased revenues or the non-existence of any need for the same."

XVIII. The Court erred in declining to set aside, annul and enjoin said order of the Interstate Commerce Commission on the ground that the Commission had no statutory power to make the same.

XIX. The Court erred in declining to set aside, annul and enjoin said order of the Interstate Commerce Commission on the ground that said Commission had contrary to the requirements of Section (13) (2) of the Interstate Commerce Act (Title 49 U. S. C. Sec. 13 (2)), refused the request made by the State of Alabama to investigate the reasonableness of interstate rates under then existing conditions and said Commission had no power to make an order such as is here challenged without making the investigation requested by said State.

XX. The Court erred in declining to set aside, annul and enjoin said order of the Interstate Commerce Commission because for the first time in the history of railroading, so far as we are advised, said order of the Commission permitted and directed an increase of revenue to the carriers when there was shown no revenue necessity therefor and, on the contrary, it appeared from all the testimony that such increase only increased the already excessive profits of the railroads on such operations.

[fol. 2821] XXI. The Court erred in declining to set aside, annul and enjoin said order of the Interstate Commerce Commission on the ground that the voluntary action of the railroads of Alabama, Kentucky and Tennessee in increasing interstate fares on October 1, 1942, to take advantage of wartime conditions, which made such increases possible or practical, at a time when the said railroads had no present need for increased revenues in order to provide adequate and efficient railway transportation service, did not render unlawful the existing and theretofore lawful intrastate fares within said states.

XXII. The Court erred in declining to set aside, annul and enjoin the order of the Interstate Commerce Commission on the ground that the Commission had no power to order increases in the intrastate coach fares of Alabama, Kentucky and Tennessee in order to compensate for passenger service deficits incurred during prior years, which deficits were in fact compensated by a support factor in freight rates.

XXIII. The Court erred in declining to set aside, annul and enjoin said order of the Interstate Commerce Commission on the ground that in its determination of the reasonableness of the interstate rates and fares, the Commission failed to give due consideration "to the need, in the public interest, of adequate and efficient railway transportation service at the lowest cost consistent with the furnishing of such service," as required of said Commission by section 15a (2) of the Interstate Commerce Act.

XXIV. The Court erred in declining to set aside, annul and enjoin the order of the Interstate Commerce Commission on the ground that the Commission was not justified in overruling action of the Alabama, Kentucky and Tennessee

railroad and utilities commissions made in conformity with Stabilization Act of 1942 and the President's Executive Order 9328, section 4, 8 F. R. 4681, which rulings of said Commissions were made at the request of the Economic Stabilization Director and the Price Administrator.

XXV. The Court erred in sustaining an erroneous rule of law applied by the Interstate Commerce Commission in that it ordered said increase in intrastate rates in order to bring about uniformity or simplification which would destroy absolutely the power of intrastate regulation.

[fol. 2822] XXVI. The Court erred in approving the action of the Interstate Commerce Commission in applying an incorrect principle of law by grounding its action in part upon the costs of troop train movements to the railroads.

XXVII. The Court erred in approving the action of the Interstate Commerce Commission in grounding its conclusion in part upon an incorrect principle of law in considering the costs of furlough fares to the railroads.

XXVIII. The Court erred in failing to find as a fact that no locality and no group or representative of coach travelers and no coach traveler had complained to the Commission or the Court of any burden or discrimination against them by reason of the difference in intrastate and interstate fares.

XXIX. The Court erred in failing to find as a fact that there was no substantial evidence before the Interstate Commerce Commission to support its specific findings numbered 1, 3, 4, 5 and 6, or any one of them, as set forth in its report of March 25, 1944 in Dockets Nos. 28963, Alabama Intrastate Fares; 29000, Kentucky Intrastate Fares; and 29037, Tennessee Intrastate Fares.

XXX. The Court erred in failing to find as a fact that the findings set forth in said report of the Interstate Commerce Commission of March 25, 1944 are inadequate to support the corrected order of the Commission of May 8, 1944, which required increases in the intrastate passenger coach fares of Alabama, Kentucky and Tennessee to become effective July 1, 1944, but later postponed to August 15, 1944.

Wherefore, appellants pray that said final decree entered August 3, 1944, be reversed.

Dated September 1, 1944.

Eldon S. Dummit, Attorney General of the Commonwealth of Kentucky; M. B. Holifield, Assistant Attorney General of the Commonwealth of Kentucky; J. E. Marks, Attorneys for Commonwealth of Kentucky and Railroad Commission of Kentucky.

William N. McQueen, Acting Attorney General; Forman Smith, Assistant Attorney General, Attorneys for The State of Alabama and Public Service Commission; Leon Jourolmon, Jr., Attorney for The State of Tennessee and the Railroad and Public Utilities Commission of the State of Tennessee.

[fol. 2823] IN UNITED STATES DISTRICT COURT

[Titles omitted]

ORDER ALLOWING APPEAL

In the above-entitled actions, The State of Alabama and Public Service Commission, the State of Tennessee and the Railroad and Public Utilities Commission of the State of Tennessee, Commonwealth of Kentucky and Railroad Commission of Kentucky, having made and filed a joint Petition for Appeal to the Supreme Court of the United States from the final decree of this Court in these actions entered on August 3, 1944, and having also made and filed an Assignment of Errors, and a Jurisdictional Statement, and having in all respects conformed to the statutes and rules of Court in such actions made and provided, it is

Ordered and decreed that the joint appeal be, and the same is hereby allowed as prayed for; and it is

Further Ordered that a certified transcript of the record herein be transmitted in due course to the Supreme Court of the United States (except as the Court may direct that [fols. 2824-2835] part of the original record herein shall be transmitted in lieu of a transcript thereof); and it is

Further ordered that the bonds of said plaintiffs on said appeal be fixed at the sum of One Thousand Dollars ($1,000) for each action, the same to be and act as bonds for costs but not as supersedeas; and that the appeal bonds in the sum of One Thousand Dollars ($1,000), wherein Alabama Public Service Commission is principal and United States Fidelity & Guaranty Co. is surety in Action No. 706; the Railroad and Public Utilities Commission of the State of Tennessee is principle and National Surety Corporation is surety in Action No. 707; and Railroad Commission of Kentucky is principal and National Surety Corporation is surety in Action No. 708, conditioned for payment of costs upon said appeal and presented for approval be, and are hereby, approved and ordered filed.

Dated September 1, 1944.

Elwood Hamilton, United States District Judge, Sitting by Designation.

[fols. 2836-2837] Citation in usual form filed September 1, 1944, omitted in printing.

[fol. 2838] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

APPELLANTS' PRAECIPE FOR CONSOLIDATED TRANSCRIPT OF RECORD ON JOINT APPEAL FROM FINAL DECREE—Filed September 1, 1944

To the Clerk of the Above-entitled Court:

You are hereby requested to prepare a consolidated transcript of the record in the above-entitled actions to be filed in the Supreme Court of the United States, pursuant to an appeal allowed therein, from the final decree of the Court, dated August 3, 1944, and to include in such consolidated transcript of record all of the original complaints, petitions, [fol. 2839] answers and other pleadings and also the original of the record of the proceedings before the Interstate Commerce Commission in its Dockets Nos. 28963, Ala-

bama Intrastate Fares; 29000, Kentucky Intrastate Fares; and 29037, Tennessee Intrastate Fares.

William N. McQueen, Acting Attorney General, Forman Smith, Assistant Attorney General, Attorneys for The State of Alabama and Public Service Commission. Leon Jourolmon, Jr., Attorney for The State of Tennessee and the Railroad and Public Utilities Commission of the State of Tennessee. Eldon S. Dummit, Attorney General of the Commonwealth of Kentucky. M. B. Holifield, Assistant Attorney General of the Commonwealth of Kentucky. J. E. Marks, Attorneys for Commonwealth of Kentucky and Railroad Commission of Kentucky.

Dated September 1st, 1944.

[fol. 2840] IN UNITED STATES DISTRICT COURT

[Titles omitted]

ORDER AS TO RECORD

It is Ordered that the original records, instead of a transcript thereof, in the above cases, be transmitted on appeal to the Supreme Court of the United States.

Elwood Hamilton, United States District Judge, Sitting by Designation.

September 1, 1944.

[fol. 2841] [File endorsements omitted]

IN UNITED STATES DISTRICT COURT

[Titles omitted]

ACKNOWLEDGMENTS OF SERVICE—Filed September 15, 1944

Receipt of service of copy of Appellants' Praecipe in the above actions is hereby acknowledged.

Signature: Charles Fahy, Solicitor General.

Date Received: Sep. 11, 1944.

61—574

[fol. 2842] Receipt of service of copy of Appellants' Praecipe in the above actions is hereby acknowledged.

Signature: Robert L. Pierce, Special Ass't to the Att'y Gen.

Date Received: Sept. 11, 1944.

[fol. 2843] Receipt of service of copy of Appellants' Praecipe in the above actions is hereby acknowledged.

Signature: Allen Crenshaw, Counsel, Interstate Commerce Commission.

Date Received: 9/11/44.

[fol. 2844] Receipt of service of copy of Appellants' Praecipe in the above actions is hereby acknowledged.

Signature: ——— — ———.

Date Received: 9/11/44.

[fols. 2845-2847] Receipt of service of copy of Appellants' Praecipe in the above actions is hereby acknowledged.

Signature: W. L. Grubbs.

Date Received: Sept. 9, 1944.

[fol. 2848] In United States District Court

[Titles omitted]

Petition for Appeal—Filed September 29, 1944

To the Honorable the Judges above-named:

The above-named Plaintiffs, the Economic Stabilization Director by the Price Administrator, considering themselves aggrieved by the final decree made and entered in the above-entitled causes on August 3, 1944, do hereby appeal therefrom to the Supreme Court of the United States for the reasons set forth in the Assignment of Errors filed herewith, and on the basis of the Supreme Court's jurisdiction upon appeal to review said order and decree as shown in the Jurisdictional Statement also filed herewith, and pray that said appeal be allowed; that a citation be issued as provided by law; and that a transcript of the record, proceedings and [fol. 2849] papers (or so far as the Court may direct, the original record in lieu of such transcript) upon which said

decree is based, duly authenticated, be sent to the Supreme Court of the United States in accordance with the rules in such cases provided.

For the Economic Stabilization Director by the Price Administrator, Richard H. Field, General Counsel; David F. Cavers, Assistant General Counsel; Bernard M. Fitzgerald, Transporation Counsel, Transportation and Public Utilties Division; M. D. Miller, Chief Counsel, Common Carrier Section, Transportation and Public Utilities Division, Office of Price Administration, 5319 Federal Office Building No. 1, 2nd & D Streets, S. W., Washington 25, D. C.

Dated, September 26, 1944.

[fol. 2850] IN UNITED STATES DISTRICT COURT

[Titles omitted]

ASSIGNMENT OF ERRORS—Filed September 29, 1944

The Economic Stabilization Director by the Price Administrator, Intervenor-Plaintiffs in the above-entitled causes, file the following assignment of error with and as part of their Petition for Appeal to the Supreme Court of the United States from the final decree of the District Court for the Western District of Kentucky, entered August 3, 1944, denying injunction and order to restrain and set aside, and annul the corrected order of the Interstate Commerce Commission, dated May 8, 1944, in Docket Nos. 28963, *Alabama Intrastate Fares;* 29000, *Kentucky Intrastate Fares;* and 29037, *Tennessee Intrastate Fares*, 258 I.C.C. 133, so far as said order required the railroads to increase intrastate passenger coach fares in said States, and further ordering and decreeing that the Complaint of Intervenor-Plaintiffs be dismissed.

Intervenor-plaintiffs assert that the District Court erred in the following respects:

[fol. 2851] (1) The Court erred in its sixth finding of fact that the stated findings of the Interstate Commerce Commission in said proceedings are supported by substantial evidence.

(2) The Court erred in its conclusion of law that said order correctly applies the proper principles of law to the facts found by the Commission and is not arbitrary and unreasonable.

(3) The Court erred with respect to the conclusion of law that the Commission properly required, on the evidence before it and its findings of facts substantially supported by said evidence, that the railroads operating in Alabama, Tennessee, and Kentucky establish and maintain intrastate coach fares for passengers on bases no lower than the existing interstate fares.

(4) The District Court erred as a matter of law in concluding that there was substantial evidence of record to sustain, consistently with the Commission's duty to "give full effect to wartime conditions and the stabilization legislation", the Commission's finding that undue, unreasonable and unjust discrimination against interstate commerce, within the meaning of Section 13(4) of the Interstate Commerce Act, had resulted from the order of the above-named plaintiff State commissions, declining to authorize intrastate passenger fare increases under wartime conditions productive of net revenue (including net passenger operating revenues) in excess of those required to meet maintenance and operating costs and to yield a fair return.

Wherefore, Plaintiffs-Appellants, the Economic Stabilization Director by the Price Administrator, pray that said final decree entered August 3, 1944 be reversed.

Respectfully submitted, Chester Bowles, Price Administrator; Richard Field, General Counsel; David F. Cavers, Assistant General Counsel; Bernard [fols. 2852-2876] M. Fitzgerald, Transportation Counsel, Transportation and Public Utilities Division; M. D. Miller, Chief Counsel, Common Carrier Section, Transportation and Public Utilties Division, Office of Price Administration, 5319 Federal Office Building No. 1, 2nd & D Streets, S. W., Washington, D. C.

Dated, September 26, 1944.

[fol. 2877] IN UNITED STATES DISTRICT COURT

[Titles omitted]

ORDER ALLOWING APPEAL

In the above-entitled cause, the Economic Stabilization Director by the Price Administrator, having made and filed a Petition for Appeal to the Supreme Court of the United States from the final decree of this Court in this cause entered August 3rd, 1944, and having also made and filed an Assignment of Errors, and a Jurisdictional Statement, and having in all respects conformed to the statutes and rules of Court in such case made and provided, it is

Ordered and Decreed that the appeal be, and the same is hereby, allowed as prayed for; and it is

Further Ordered that a certified transcript of the record herein be transmitted in due course to the Supreme Court of the United States (except as the Court may direct that part of the original record herein shall be transmitted in [fols. 2878-2880] lieu of a transcript thereof).

Shackelford Miller, Jr., United States District Judge.

Dated, September 29th, 1944.

[fol. 2881] IN UNITED STATES DISTRICT COURT

[Titles omitted]

APPELLANTS' PRAECIPE FOR TRANSCRIPT OF RECORD ON APPEAL FROM FINAL DECREE—Filed September 29, 1944

To the Clerk of the Above-entitled Court:

You are hereby requested to prepare a transcript of the record in the above-entitled actions to be filed in the Supreme Court of the United States, pursuant to an appeal allowed therein, from the final decree of the Court, entered August 3, 1944, and to include in such transcript of record the original complaints, petitions, answers, and other pleadings; a copy of the decree, findings of fact, conclusions of law, and opinion of the Court; the evidence submitted by the parties to the Court, including the original of the record

of the proceedings before the Interstate Commerce Commission in its Dockets Nos. 28963, *Alabama Intrastate Fares* 29000, *Kentucky Intrastate Fares* and 29037, *Tennessee Intrastate Fares:* the notice of appeal, petition for appeal, and assignment of errors on behalf of the Economic Stabilization Director by the Price Administrator, the order allowing such appeal, citation on appeal, jurisdictional statement by said appellants with attached decree, findings of fact, conclusions of law, and opinion of the District Court sought to be reviewed, statement by plaintiffs-appellants directing attention to paragraph 3 of Rule 12 of the revised rules of the Supreme Court of the United States, the praecipe and acknowledgements of service therefore, and the order as to transcript of record.

[fols. 2882-2883] For the Economic Stabilization Director by the Price Administrator, Richard H. Field, General Counsel; David F. Cavers, Assistant General Counsel; Bernard M. Fitzgerald, Transportation Counsel, Transportation and Public Utilities Division; M. D. Miller, Chief Counsel, Common Carrier Section, Transportation and Public Utilities Division, Office of Price Administration, 5319 Federal Office Building No. 1, 2nd & D Streets, S. W., Washington 25, D. C.

Dated, September 26, 1944.

[fol. 2884-2886] In United States District Court

[Titles omitted]

Order to Transmit Original Record

The Clerk will transmit the original record consisting of Notice of Appeal and all papers in connection therewith filed in this office, to the Clerk of the Supreme Court of the United States, on the appeal of the Economic Stabilization Director, Intervenor-Plaintiff herein.

Shackelford Miller, Jr., Judge.

October 11, 1944.

[fol. 2887] IN UNITED STATES DISTRICT COURT

[Titles omitted]

ORDER AS TO TRANSCRIPT OF RECORD

In accordance with the provisions of the praecipe for transcript of record of Plaintiffs-Appellants, the Economic Stabilization Director by the Price Administrator, on appeal from the final decree of this Court in the above-entitled proceedings, entered August 3, 1944, it is hereby

Ordered, that the Clerk of this Court transmit as part of a consolidated record on appeal to the Supreme Court of the United States in the above-entitled proceedings, such documents and evidence mentioned by said praecipe as have not already been included in the transcript of record upon the motion of Plaintiffs-Appellants, the State of Alabama and Public Service Commission, the State of Tennessee and Railroad and Public Utilities Commission of the State of Tennessee and Commonwealth of Kentucky and Railroad Commission of Kentucky.

Shackelford Miller, Jr., U. S. District Judge.

This 11th day of Oct., 1944.

[fol. 2888] IN THE SUPREME COURT OF THE UNITED STATES

No. 574

STATEMENT OF POINTS ON WHICH APPELLANTS, THE STATE OF ALABAMA AND PUBLIC SERVICE COMMISSION, COMMONWEALTH OF KENTUCKY, AND RAILROAD COMMISSION OF KENTUCKY, INTEND TO RELY—Filed October 23, 1944

Appellants, The State of Alabama and Public Service Commission, Commonwealth of Kentucky and Railroad Commission of Kentucky, both in brief and upon oral argument will rely on each and every of the points specifically raised in appellants' assignment of errors heretofore filed herein, which points, without omitting any thereof, may for purposes of convenience and clarity be more concisely stated as follows:

[fol. 2889] Point 1

There was no substantial or any evidence presented orally by witnesses, or by exhibits filed at the hearings

before the Interstate Commerce Commission, or any evidence presented at hearings in other proceedings before the Commission and stipulated into the records in the instant proceedings under the provisions of the Commission's Rules of Practice, to support all or any of the findings of the Commission herein, and the orders of the Commission based upon said unsupported findings are void and unenforceable.

Point II

The mere showing of the fact that the intrastate coach fares are lower than the corresponding interstate fares is without probative value, and does not constitute evidence of any undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce on the one hand and interstate or foreign commerce on the other hand, or any undue, unreasonable, or unjust discrimination against interstate or foreign commerce.

Point III

Statements made by representatives of the rail carriers at the hearings before the Interstate Commerce Commission that the Commission in 1936, in a proceeding known as *Passenger Fares and Surcharges*, 214 I. C. C. 174, prescribed a maximum interstate coach fare for 2 cents per passenger mile between points in the United States, and in the same proceeding approved as reasonable and lawful an interstate coach fare of 1.5 cents per passenger mile in southern territory, which includes all of Alabama and most of Kentucky; that the Commission in a proceeding known [fol. 2890] as *Increased Railway Rates, Fares and Charges, 1942*, 243 I. C. C. 545, *et seq.*, commonly known as *Ex Parte 148*, authorized effective February 10, 1942, a general increase of 10 per cent in passenger fares for the duration of the war and six months thereafter; that the Commission in a subsequent order in *Ex Parte 148*, dated August 1, 1942, without a hearing thereon and without notice to the public thereof, authorized the rail carriers operating in southern territory to file tariffs, effective October 1, 1942, increasing their interstate fares from 1.65 cents to 2.2 cents per passenger mile, and that the Commission later refused to suspend said increases, even though requests for suspension were presented to it, are without probative value, and do not constitute evidence that the

present interstate fares to, from and through the states affected are just and reasonable.

None of the evidence presented in *Passenger Fares and Charges, supra,* and *Ex Parte 148, supra,* was stipulated into the records in the instant proceedings, as provided by Rule 82 of the Commission's Rules of Practice. Furthermore, *Ex Parte 148* was a revenue proceeding only from which the issue of the reasonableness of particular fares, rates and charges, was specifically excluded.

Point IV

Testimony of representatives of the rail carriers at the hearings before the Interstate Commerce Commission that there have been some increases in the cost of operating their passenger services during the war period, without showing the extent of such alleged increased costs and also without showing whether such alleged increased costs have been more than offset by the tremendous increases in pas- [fol. 2891] senger traffic, is without probative value, and does not constitute evidence of the reasonableness of the present interstate coach fares.

Point V

The testimony of representatives of the rail carriers at the hearings before the Interstate Commerce Commission that intrastate passengers ride in the same trains and sometimes in the same cars as interstate passengers and at lower fares per passenger mile than paid by the interstate passengers, is without probative value, and does not constitute evidence of any undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce on the one hand and interstate or foreign commerce on the other hand, or any undue, unreasonable, or unjust discrimination against interstate or foreign commerce. If such testimony is adjudged to have probative value and to constitute evidence of advantage, preference, or prejudice as between persons or localities, or discrimination against interstate commerce, the Interstate Commerce Commission would inevitably become the sole arbiter of all intrastate fares, rates and charges, because all intrastate traffic is intermingled in the same trains and sometimes in the same cars as like interstate traffic.

Point VI

Statements made by representatives of the rail carriers at the hearings before the Interstate Commerce Commission that a person who desires to travel from an interior origin in the states affected to an interstate destination may, under favorable circumstances, not always present, purchase a ticket at the intrastate fare to a station at or near the state border, detrain at the latter station and there purchase [fol. 2892] a ticket at the interstate fare to an interstate destination, and thus avoid payment of the full price of his interstate transportation, are without probative value, and do not constitute evidence of any undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce on the one hand and interstate or foreign commerce on the other hand, or any undue, unreasonable, or unjust discrimination against interstate or foreign commerce. The congressional intent by the adoption of the Interstate Commerce Act was to give a remedy against actual and not imaginary and improbable evils, and there was no evidence presented at the hearings that such possible evasions of the law had been practiced.

Point VII

Testimony and exhibits presented by representatives of the rail carriers at the hearings before the Interstate Commerce Commission tending to show losses incurred in their over-all passenger operations in prior years, are without probative value, and do not constitute evidence of any undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce on the one hand and interstate or foreign commerce on the other hand, or any undue, unreasonable, or unjust discrimination against interstate or foreign commerce. Furthermore, such testimony and exhibits do not constitute evidence of the reasonableness of the present interstate coach fare of 2.2 cents per passenger mile.

Point VIII

The hearings before the Interstate Commerce Commission herein were not general hearings made upon the Commission's own motion, but hearings necessarily specific because [fol. 2893] ordered upon the petitions of the rail carriers

only. No locality, or person engaged in interstate travel, intervened therein, or was otherwise made a party thereto, or offered evidence in its or his own behalf therein, and the only issue before the Commission at said hearings was whether or not the intrastate coach fare of 1.65 cents per passenger mile approved by the state commissions constituted a discrimination against interstate or foreign commerce. By reason of these facts the Commission had no jurisdiction over any locality, or person engaged in interstate travel, and had no authority to hear or consider evidence offered at said hearings by witnesses for the rail carriers on the issue of undue or unreasonable advantage, preference or prejudice in favor of or against any locality or person not before it, and the attempted finding in favor of persons in interstate travel over whom it had no jurisdiction, and whom it could not from the record name, was void, and the order based upon said finding was and is unenforceable.

Point IX

The Interstate Commerce Commission and the District Court erred in their general conclusion of law that an intrastate fare lower than a reasonable interstate fare for substantially the same service is unlawful if an increase in the intrastate fare to the interstate level would produce increased revenues, even though the railroads have no present need for such increased revenues and regardless of the reasonableness of the intrastate fares.

[fol. 2894]

Point X

The Interstate Commerce Commission and the District Court erred in that they did not recognize in their decisions and judgments that the state commissions have the exclusive jurisdiction to determine the lawfulness of the intrastate coach fares and the power to require the rail carriers to maintain said fares, unless the intrastate fares fail to product an income sufficient to pay its fair proportionate part of the cost of maintaining and operating the transportation service and to provide a reasonable return upon the transportation investment, and thus cast a burden upon interstate commerce, and that said intrastate fares do not become unlawful merely because the Interstate Commerce Commission permits said rail carriers to charge higher in-

terstate fares, also within the zone of reasonableness, to, from and through the states affected.

[fol. 2895] [File endorsement omitted.]

[fol. 2896] IN THE SUPREME COURT OF THE UNITED STATES

Term No. 574

STATEMENT OF POINTS ON WHICH THE STATE OF TENNESSEE AND THE RAILROAD AND PUBLIC UTILITIES COMMISSION OF THE STATE OF TENNESSEE INTEND TO RELY—Filed October 23, 1944

The State of Tennessee and the Railroad and Public Utilities Commission of the State of Tennessee, Plaintiffs-Appellants in the above styled actions, for a Statement of the Point on which they intend to rely in brief and oral argument respectfully say:

[fol. 2897] The District Court of the United States for the Western District of Kentucky, Louisville Division, erroneously refused to enjoin, set aside and annul an order of the Interstate Commerce Commission requiring the railroads operating within the States of Alabama, Tennessee and Kentucky to increase the intrastate coach fares in said States, although said action of the Interstate Commerce Commission contravenes the Tenth Amendment of the Constitution of the United States inasmuch as the finding of said Commission that the intrastate fares imposed by authority of the respective states have caused or will cause an undue, unreasonable or unjust discrimination against interstate or foreign commerce is not sustained by the evidence of record, there being no evidence of any revenue burden upon interstate commerce nor any finding of the Commission of the amount of additional revenues from intrastate rates required to enable the carriers to adequately and sufficiently meet the country's transportation needs.

They further state that the foregoing point on which they rely is supported by the following assignments of error filed in the District Court of the United States for the Western District of Kentucky, Louisville Division, on September 1, 1944, to-wit: XVII and XX.

These parties also rely specifically upon the following assignments of error: I, II, XII, XIII, XIV, XVI, and XXII, all of which relate to the single point stated above.

Respectfully submitted, Leon Jourolmon, Jr., Attorney for State of Tennessee and Railroad and Public Utilities Commission of the State of Tennessee.

[fol. 2898] CERTIFICATE OF SERVICE

I hereby certify that I, this day, served the foregoing Statement of Points upon all parties of record in this proceeding by mailing a copy thereof, properly addressed to the Attorney of each such party.

Dated this 20th day of October, 1944.

Leon Jourolmon, Jr., Attorney of State of Tennessee and the Railroad and Public Utilities Commission of the State of Tennessee.

[fol. 2899] [File endorsement omitted.]

[fol. 2900]

IN SUPREME COURT OF THE UNITED STATES

No. 574

Designation of the Parts of the Record to Be Printed for Account of Appellants

Filed Oct. 9, 1944

I. Action No. 706 (Alabama Complaint)

All of record *except* the parts designated below:

Part to be Omitted	*Reason for Omission*
Exhibit A of Petition (copy of decision of Interstate Commerce Commission)	Same as Exhibit B in Petition 707
Exhibit D of Petition (Copy of order of Interstate Commerce Commission denying reopening)	Same as Exhibit C in Petition 707
Exhibit F of Petition (Copy of corrected order of Interstate Commerce Commission of May 8, 1944)	Same as Exhibit A in Petition 707
Summons and Returns	Not necessary
Motion of Fred M. Vinson intervening in Action 706	Not necessary
Order of Court granting intervention of Fred M. Vinson	Not necessary.
Motion of carriers, et al. to dismiss complaint of Fred M. Vinson	Not necessary
Transcript of arguments before Three-judge Court on application for injunction	Not necessary
All briefs	Not necessary
Exhibits before Interstate Commerce Commission in Docket 28963 as shown below:	
No. 1—Map	Not necessary
No. 25—Excerpts from decision	Not necessary
No. 39—Excerpts from 214 I.C.C.	Not necessary
No. 40—(Except both sides of Sheet 1)	Not necessary
No. 41 and those having higher numbers	Not necessary

[fol. 2901]

II. Action No. 707 (Tennessee Complaint)

All of record *except* the parts designated below:

Part to be Omitted	*Reason for Omission*
Complaint	See note below
Exhibits A, B, C, D and E of Complaint	See note below
Transcript of Record and all Exhibits in I.C.C. Docket 29037	Same as Exhibit E of Complaint
Summons and Returns	Not necessary
Motion of Fred M. Vinson intervening as Plaintiff in Action 707	Not necessary
Order of Court granting intervention of Fred M. Vinson	Not necessary
Motion of carriers to dismiss complaint of Fred M. Vinson	Not necessary
All briefs	Not necessary
Certificate of I.C.C. certifying the record in Docket 29037 including various petitions, answers and orders of I.C.C.	Not necessary
Stenographer's minutes taken in Nashville, Tennessee, December 2-3, 1943	Same as Exhibit E of Complaint
Exhibits 1-17 filed in Docket 29037	Same as Exhibit E of Complaint, see note below
Report of Commission and decision of Interstate Commerce Commission, March 25, 1944	Same as Exhibit E of Complaint, see note below
Order of Interstate Commerce Commission denying reconsideration, May 8, 1944	Same as Exhibit C of Complaint
Corrected order of I.C.C., May 8, 1944	Same as Exhibit A of Complaint, see note below
Certificate of I.C.C. as to papers embodied in Docket 29037 by reference, this being petitions of various parties for investigation of interstate coach fares and action of I.C.C. relative thereto	Not necessary

[fol. 2902]

Petition of the North Carolina Utilities Commission asking for investigation of interstate passenger fares	Not necessary
Petition of Prentice M. Brown and Office of Price Administration, dated July 31, 1943, asking for general investigation of interstate passenger fares in the south	Not necessary
Reply of railroads to petition of OPA dated August 9, 1943	Not necessary
Petition of Alabama Public Service Commission asking for investigation of interstate passenger fares	Not necessary
Letter of rail carriers to Secretary of Interstate Commerce Commission dated September 8, 1943	Not necessary
Letter of Interstate Commerce Commission signed by Secretary Bartel to North Carolina Utilities Commission, Alabama Public Service Commission and Prentice M. Brown, Price Administrator, dated October 13, 1943	Not necessary

Part to be Omitted	*Reason for Omission*
Certificate of Interstate Commerce Commission as to statistical statements prepared by the I.C.C. for the months of October, November and December, 1943	Not necessary
Interstate Commerce Commission statistical statement No. M-100 for October, November, and December, 1943.	Copies of these Exhibits are to be furnished for use in all three records. If they cannot be obtained they need not be printed
Interstate Commerce Commission statement No. M-150 for the months of October, November and December, 1943	Copies of these Exhibits are to be furnished for use in all three records. If they cannot be obtained they need not be printed
Interstate Commerce Commission statistical statement No. M-250 for the month of October, 1943	Copies of these Exhibits are to be furnished for use in all three records. If they cannot be obtained they need not be printed
[fol. 2903]	
Transcript of arguments before Three-Judge Court on application for injunction	Not necessary

Note—Pursuant to agreement reached at conference held in the office of the Clerk of the United States Supreme Court, September 25, 1944, plaintiffs in Action 707 are to furnish the Clerk with 30 copies of their complaint filed in the lower court, dated June 10, 1944, and said copies are to be accepted as part of the printed record and to be designated as Volume 1.

III. Action No. 708 (Kentucky Complaint)

All of record *except* the parts designated below:

Part to be Omitted	*Reason for Omission*
Exhibit A of Petition (Copy of corrected order of Interstate Commerce Commission of May 8, 1944)	Same as Exhibit A in Petition 707
Exhibit C of Petition (Copy of decision of Interstate Commerce Commission)	Same as Exhibit B in Petition 707
Exhibit D of Petition (Copy of Interstate Commerce Commission order denying reopening)	Same as Exhibit C in Petition 707
Summons and Returns	Not necessary
Order of June 20, 1944 in regard to affidavit of J. E. Marks	Not necessary
Affidavit of J. E. Marks	Not necessary
Motion of Fred M. Vinson intervening in Action 708	Not necessary
Order of court granting intervention of Fred M. Vinson	Not necessary
Motion of carriers, et al. to dismiss complaint of Fred M. Vinson	Not necessary
Transcript of arguments before Three-Judge Court on application for injunction	Not necessary
All briefs	Not necessary

[fol. 2904] *Part to be Omitted*	*Reason for Omission*
Exhibits before Interstate Commerce Commission in Docket 29000 as shown below:	
No. 1—Map	Not necessary
No. 2—Decision of Ky. R.R. Commission	Same as Exhibit B in Complaint 708
No. 16—Method used in assigning passenger revenues and expenses	Not necessary

IV. Appeal Pleadings, Etc.

In addition to the parts of the record designated above there should be printed for the joint account of all three appellants the following described orders and pleadings:

1—Order convening three judge court.
2—Notice of Appeal
3—Petition for Appeal
4—Assignment of Errors
5—Order allowing Appeal
6—Citation on Appeal
7—Jurisdictional Statement by Plaintiffs
8—Decree, Findings of Fact and Conclusions of Law, and Opinion of District Court
9—Statement by plaintiffs appellants directing attention to Paragraph 3 of Rule 12 of the Revised Rules of the Supreme Court of the United States
10—Appellants' Praecipe
11—Order of Court for transmittal of original record to Supreme Court
12—Acknowledgment of service of appeal papers by attorneys for all parties

[fol. 2905] V. Statement of the Points Relied on by Appellants

Pursuant to Rule 13 (9) of the Supreme Court Rules, Appellants are to furnish to the Clerk of the Supreme Court within 15 days after the case is docketed (now scheduled for October 9, 1944) statements of the points on which they intend to rely, and such statements are to be included in the printed record.

[fol. 2906] (File endorsement omitted)

[fol. 2907] IN THE SUPREME COURT OF THE UNITED STATES

No. 592

APPELLANTS' DESIGNATION OF POINT INTENDED TO BE RELIED UPON—Filed October 24, 1944

Appellants, Fred M. Vinson, Economic Stabilization Director, by Chester Bowles, Price Administrator, state the following as the point on which they intend to rely in their appeal to this Court from the final decree dismissing their complaints, entered by the District Court for the Western District of Kentucky on August 3, 1944:

The findings and order of the Interstate Commerce Commission were not based on substantial evidence, are er-

roneous in law, and are arbitrary and unreasonable. In particular, the record before the Commission did not contain substantial evidence to sustain, consistently with the Commission's duty to "give full effect to wartime conditions and the stabilization legislation," the Commission's finding that an undue, unreasonable, and unjust discrimination against interstate commerce, within the meaning of Section 13(4) of the Interstate Commerce Act, had resulted from the decisions and orders of the Alabama Public Service Commission, the Kentucky Railroad Commission, and the Tennessee Railroad and Public Utilities Commission declining to authorize intrastate passenger fare increases under wartime conditions productive of net revenues (including net passenger operating revenues) in excess of those required to meet maintenance and operating costs and to yield a fair return.

[fol. 2908] DESIGNATION OF PARTS OF RECORD TO BE PRINTED

Appellants, Fred M. Vinson, Economic Stabilization Director, by Chester Bowles, Price Administrator, designate the following as parts of a consolidated record to be printed in addition to those portions designated by the appellants, the States of Alabama, Kentucky, and Tennessee, et al., in U. S. Supreme Court Docket No. 574, October term, 1944:

Motions of Economic Stabilization Director to intervene in Civil Actions 706, 707, 708, D. C., E. D. Ky.

Orders of Court granting interventions.

Motion of intervening railroads to dismiss complaints of Economic Stabilization Director.

Petition for appeal by Economic Stabilization Director.

Assignment of Errors by Economic Stabilization Director.

Order allowing appeal by Economic Stabilization Director.

Praecipe of Economic Stabilization Director.

Order of Court directing transmittal of original record to Supreme Court on the appeal of the Economic Stabilization Director.

Statement of points intended to be relied upon and designation of parts of record to be printed for the Economic Stabilization Director.

For the Economic Stabilization Director, by the Price Administrator, Richard H. Fields, General Counsel; David F. Cavers, Assistant General Counsel; Bernard M. Fitzgerald, Transportation Counsel, Transportation and Public Utilities Division; M. D. Miller, Chief Counsel, Common Carrier Section.

[fol. 2909] The undersigned acknowledge receipt of a copy of the attached designations of point to be relied upon and of parts of record to be printed, for appellants, Fred M. Vinson, Economic Stabilization Director, by Chester Bowles, Price Administrator, vs. The United States of America, Interstate Commerce Commission, The Alabama Great Southern Railroad Co., et al., U. S. Supreme Court Docket No. 592, October Term, 1944.

Signature of Recipient	Date Received
Allen Crinshaw, for the Interstate Commerce Commission	10/21/44
Charles Fahy, Solicitor General	10/21/44
Charles Clark	Oct. 21, 1944
(Name illegible.)	

[fol. 2910] [File endorsement omitted.]

[fol. 2911] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1944

Nos. 574 & 592

ORDER NOTING PROBABLE JURISDICTION—November 13, 1944

The statements of jurisdiction in these cases having been submitted and considered by the Court, probable jurisdiction is noted and the cases are assigned for argument immediately following Nos. 560 and 561.

Endorsed on Cover: File No. 49,027, 49,045, D. C. U. S., Western Kentucky. Term No. 574. The State of Alabama and Public Service Commission, The State of Tennessee and the Railroad and Public Utilities Commission of the State of Tennessee, Commonwealth of Kentucky and Railroad Commission of Kentucky, Appellants, vs. The United

States of America, Interstate Commerce Commission and Fred M. Vinson, Economic Stabilization Director, by Chester Bowles, Price Administrator, et al. Term No. 592. Fred M. Vinson, Economic Stabilization Director, by Chester Bowles, Price Administrator, Appellant, vs. The United States of America, Interstate Commerce Commission and The Alabama Great Southern Railroad Company, et al. Filed October 9, 1944. October 13, 1944. Term No. 574 O. T. 1944. 592 O. T. 1944.

(6425)

FILE COPY

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

Office - Supreme Court, U. S.
FILED
OCT 9 1944
CHARLES ELMORE CROPLEY
CLERK

No. 574

THE STATE OF ALABAMA AND PUBLIC SERVICE COMMISSION, THE STATE OF TENNESSEE AND THE RAILROAD AND PUBLIC UTILITIES COMMISSION OF THE STATE OF TENNESSEE, COMMONWEALTH OF KENTUCKY AND RAILROAD COMMISSION OF KENTUCKY,

Appellants,

vs.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION AND FRED M. VINSON, ECONOMIC STABILIZATION DIRECTOR, BY CHESTER BOWLES, PRICE ADMINISTRATOR, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF KENTUCKY.

STATEMENT AS TO JURISDICTION

WILLIAM N. McQUEEN,
Acting Attorney General;
FORMAN SMITH,
Assistant Attorney General;
Counsel for the State of Alabama and Public Service Commission.

LEON JOURDAN, JR.,
Counsel for the State of Tennessee and the Railroad and Public Utilities Commission of the State of Tennessee.

ELDON DUMMIT,
Attorney General;
M. B. HOLIFIELD,
Assistant Attorney General;
J. E. MARKS,
Counsel for Commonwealth of Kentucky and Railroad Commission of Kentucky.

INDEX

Subject Index

	Page
Statement as to jurisdiction	1
Statutory provisions	2
The statute of a state, or the statute or treaty of the United States, the validity of which is involved	2
Date of the judgment or decree sought to be reviewed and the date upon which the application for appeal was presented	3
Nature of the case and of rulings below	3
Cases sustaining the Supreme Court jurisdiction of the appeal	9
The question is substantial	9
Appendix "1"—Decree of the District Court	11
Appendix "2"—Findings of fact and conclusions of law	13
Appendix "3"—Opinion of the District Court	17

Table of Cases Cited

Arizona Grocery Co. v. *Atchison, T. & S. F. Ry. Co.*, 284 U. S. 370	8
Atchison, T. & S. F. R. Co. v. *U. S.*, 284 U. S. 248	9
First National Bank v. *Louisiana Tax Commission*, 289 U. S. 60	9
Florida v. *U. S.*, 282 U. S. 194	9
Increased Railway Rates, Fares and Charges, 1942, 248 I. C. C. 545	8
Passenger Fares and Surcharges, 214 I. C. C. 174	8
Railroad Comm. of Wisc. v. *Chicago, B. & Q. R. Co.*, 257 U. S. 563	6
State of New York v. *U. S.*, 257 U. S. 591	9
U. S. v. *American Sheet & Tin Plate Co.*, 301 U. S. 402	9
U. S. v. *Louisiana*, 290 U. S. 70	9

STATUTES CITED

	Page
Interstate Commerce Act, Section 15a (49 U. S. C. 15a)	7
United States Code, Title 28, Section 41(28)	2
Section 44	2
Section 47	2
Section 47a	2
Section 345	2

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF KENTUCKY, LOUISVILLE DIVISION

Action No. 706

THE STATE OF ALABAMA AND PUBLIC SERVICE COMMISSION, *Plaintiffs,*

versus

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, *Defendants.*

Action No. 707

THE STATE OF TENNESSEE AND THE RAILROAD AND PUBLIC UTILITIES COMMISSION OF THE STATE OF TENNESSEE, *Plaintiffs,*

versus

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, *Defendants.*

Action No. 708

COMMONWEALTH OF KENTUCKY AND RAILROAD COMMISSION OF KENTUCKY, *Plaintiffs,*

versus

UNITED STATES OF AMERICA, *Defendant.*

Before the Honorable Elwood Hamilton, United States Circuit Judge, and the Honorable Mac Swinford, and the Honorable Shackelford Miller, Jr., United States District Judges, Constituting the United States District Court in the Above-Entitled Actions.

JURISDICTIONAL STATEMENT BY PLAINTIFFS UNDER RULE 12 OF THE REVISED RULES OF THE SUPREME COURT OF THE UNITED STATES.

The State of Alabama and Public Service Commission, The State of Tennessee and the Railroad and Public Utili-

ties Commission of the State of Tennessee, Commonwealth of Kentucky and Railroad Commission of Kentucky, plaintiffs, respectfully present the following statement disclosing the basis upon which it is contended that the Supreme Court of the United States has jurisdiction upon appeal to review the decree in the above-entitled actions sought to be reviewed:

A. Statutory Provisions

The statutory provisions believed to sustain the jurisdiction are:

United States Code, Title 28, Section 47. (Act of October 22, 1913, Ch. 32, 38 Stat. 220.)

United States Code, Title 28, Section 47a. (Act of March 3, 1911, Ch. 231, Sec. 210, 36 Stat. 1150; October 22, 1913, Ch. 32, 38 Stat. 220.)

United States Code, Title 28, Section 41 (28). (Act of March 3, 1911, Ch. 231, Sec. 207, 36 Stat. 1148; October 22, 1913, Ch. 32, 38 Stat. 219.)

United States Code, Title 28, Section 44. (Act of October 2, 1913, Ch. 32, 38 Stat. 220.)

United States Code, Title 28, Section 345. (Act of March 3, 1911, Ch. 231, Sec. 238, 36 Stat. 1157; January 28, 1915, Ch. 22, Sec. 238, 36 Stat. 1157; January 28, 1915, Ch. 22, Sec. 2, 38 Stat. 804; February 13, 1925, Ch. 229, Sec. 1, 43 Stat. 938.)

B. The Statute of a State, or the Statute or Treaty of the United States, the Validity of Which Is Involved

The validity of a statute of a State, or of a statute or treaty of the United States, is not involved.

C. Date of the Judgment or Decree sought To Be Reviewed and the Date Upon Which the Application For Appeal Was Presented.

The decree sought to be reviewed was entered on August 3, 1944. Petition for appeal was presented on September 1, 1944, together with an Assignment of Errors.

D. Nature of Case and of Rulings Below

This is an appeal from a final decree of the District Court of the United States for the Western District of Kentucky, Louisville Division, entered August 3, 1944, which (1) denied injunctions sought by plaintiffs to restrain the enforcement of an order of the Interstate Commerce Commission of May 8, 1944, in so far as said order required that the intrastate passenger coach fares within the State of Alabama, Kentucky and Tennessee be increased approximately 33⅓ per cent, and to be not less than the corresponding interstate fares, effective July 1, 1944, but later postponed to August 15, 1944, and (2) dismissed the complaints of the plaintiffs and each of them.

The District Court which denied such injunctions and dismissed said complaints was constituted under the provisions of Section 47, Title 28, of United States Code, and consisted of the Honorable Elwood Hamilton, Circuit Judge, the Honorable Mac Swinford and the Honorable Shackelford Miller, Jr., District Judges.

The applications for such injunctions were based on complaints filed by plaintiffs on June 12, 1944, against the United States of America and the Interstate Commerce Commission, pursuant to the provisions of Sections 41 (28) and 43-48, inclusive, of Title 28 United States Code, and upon petition for leave to intervene by Fred M. Vinson, Economic Stabilization Director, by Chester Bowles, Price Administrator, allowed July 17, 1944.

The order of the Interstate Commerce Commission against which such injunctions were sought was founded upon its report of March 25, 1944, wherein three of the ten Commissioners who participated therein dissented, with Commissioner Splawn, writing a dissenting opinion and Commissioners Aitchison and Mahaffie concurring therein.

In the majority report the Commission overruled the recommendations of the examiners in the two cases in which proposed reports had been issued, namely, Alabama and Kentucky, that no increases be required in the intrastate fares, and that the proceedings be dimissed. The majority further found (1) that the interstate coach fares in effect in Alabama, Kentucky and Tennessee were just and reasonable; (2) that the interstate coach fares in said states were lower than the corresponding fares applicable on interstate and intrastate generally throughout southern territory; (3) that conditions affecting the transportation of passengers in coaches within these three states, intrastate on the one hand, and interstate to, from and through these states, on the other, were substantially similar; (4) that the interstate passengers in these states travel in the same train and generally in the same cars as intrastate passengers but are forced to pay higher fares than the intrastate passengers for like services to the undue and unreasonable advantage of the intrastate passengers and the undue and unreasonable disadvantage and prejudice of the interstate passengers; (5) that the railroads' revenues under the lower intrastate fares were less by at least $725,000 per annum in Alabama, $500,000 in Kentucky and $525,000 in Tennessee, than they would be if those fares were increased to the level of the corresponding interstate fares, and that the traffic moving under these lower intrastate fares was not contributing its fair share of the revenues required to enable the railroads to render adequate and efficient transportation service; and (6) that the maintenance of the intra-

state coach fares in these states to the extent that such fares are on a lower level than the corresponding interstate fares cause and would cause undue and unreasonable and unjust discrimination against interstate commerce, and that this unlawfulness should be removed by increasing the intrastate fares in the respective states to the level of the corresponding interstate fares contemporaneously maintained by the railroads to, from and through such states.

The majority further stated in said report that unless the intrastate coach fares within the states of Alabama, Kentucky and Tennessee were raised to the level of the corresponding interstate fares within a period of 30 days consideration would be given to the entry of a proper order.

Shortly after the receipt of the report on March 25, 1944, petitions were filed by protestants (plaintiffs herein) asking for reopening, reconsideration and reversal of the majority report. These petitions were denied by an order of the Commission dated May 8, 1944.

The Commission also issued another order dated May 8, 1944, which, as later corrected, is the order which the plaintiffs herein asked to have enjoined, set aside and annulled.

When the complaints came before the District Court for hearing they were consolidated and tried as one action and disposed of by a single written opinion and by a single judgment. At said hearing the plaintiffs offered in evidence the transcripts of the records made before the Interstate Commerce Commission and also certain exhibits showing statistics which were stipulated into the records by agreement of the parties at the oral argument before the Interstate Commerce Commission. The Court refused to receive certain other exhibits containing statistics of later operations of the railroads on the ground that such statistics were not properly a part of the record before the Interstate Commerce Commission. The complaints were submitted upon said evidence and upon oral argument and briefs of counsel.

The District Court made the following conclusions of law:

> "• • • the power of the Commission to fix intrastate rates is limited to the two situations of (1) where the evidence shows a preference as between persons or localities in intrastate commerce on the one hand and interstate commerce on the other hand, and (2) where the evidence shows any unreasonable or unjust discrimination against interstate commerce. Any attempt on the part of the Interstate Commerce Commission to regulate intrastate rates where one of these two situations does not exist would be in conflict with the Tenth Amendment to the United States Constitution."
> (Sheet 10 of mimeographed Opinion).

• • • • • • • •

> "The validity of the Commission's order of May 8th, 1944 rests primarily upon the basic fact that interstate coach fares to, from and through the three states in question are just and reasonable. Unless that fact is first established there is no basis for a finding of discrimination against interstate commerce. Georgia Public Service Commission v. United States, 283 US 765; United States v. Louisiana, 290 US 70."
> (Sheet 11 of mimeographed Opinion).

Plaintiffs contend, however, that the above quoted principles of law have not been correctly applied to the facts of record either by the Commission or the District Court.

The Commission made no finding of discrimination against interstate *localities* and plaintiffs submit that under the decision in Railroad Commission of *Wisconsin* v. *Chicago, B. & Q. R. Co.*, 257 U. S. 563, 580, 588, the finding of undue preference of intrastate passengers and undue prejudice against interstate passengers, set forth in the Commission's Finding No. 4, cannot be sustained on a mere showing of intermingling of these two classes of traffic. With respect to this finding of the Commission the District Court said:

"That part of finding No. 4 which states that the payment by interstate passengers of a higher fare than is paid by the intrastate passengers is to the undue and unreasonable disadvantage and prejudice of the interstate passengers may or may not be sufficiently supported by the evidence to justify its finding, but in view of finding No. 6, hereinbelow referred to, it becomes unnecessary to decide that point."
(Sheet 15 of mimeographed Opinion).

Plaintiffs further contend that the finding of discrimination against interstate commerce set forth in the Commission's Finding No. 6, and concurred in by the District Court, is not in accord with the evidence before the Commission but is contrary to such evidence and the law governing such evidence for the reasons set forth below, among others:

1. No cost study or other evidence was presented to show that the intrastate fares were not paying their fair proportionate part of the cost of maintaining an efficient transportation service as required by Section 15a of the Interstate Commerce Act, 49 U. S. C. 15a.

2. The evidence showed that the railroads are not in need of additional revenues and that the additional revenues to be derived from the increased fares, when added to existing revenues, will be materially more than the carriers are entitled to receive. The District Court held (Sheet 16) "That may be the result, at least temporarily." The Court then undertook to justify (erroneously, we submit) that such increased revenues may be needed by the railroads in the future when they may be in a less prosperous condition.

3. The finding of the lower court (Sheet 15) that the lower intrastate fares are used to defeat interstate fares is contra to the following finding of the Commission:

"Specific evidence that the intrastate fares have been and are being used to defeat or avoid payment of the

interstate fares in particular instances was not submitted, and admittedly is difficult to obtain."

Since such practices are unlawful, it should not be presumed that they are being indulged in by the public.

4. The District Court erroneously concluded as a matter of law (Sheet 15 of Opinion) that a mere difference between the interstate and intrastate fares "necessarily results in intrastate traffic failing to pay a fair proportionate share of the cost, maintenance and operation and is discriminatory against interstate traffic."

5. The District Court erroneously proceeded on the assumption that preferences, prejudices and discriminations in rates and fares are unlawful irrespective of whether they are undue or unjust.

The finding by the Commission in its Finding No. 1, that the interstate coach fares are just and reasonable is founded almost entirely upon the Commission's findings and orders in Increased Railway Rates, Fares and Charges, 1942, 248 I. C. C. 545, *et seq.*, commonly referred to as Ex Parte 148. In said proceeding the primary question was whether the railroads were entitled to additional revenues because of actual and anticipated increases in expenses due to war conditions. The question of the *per se* reasonableness of individual rates and fares was not before the Commission but was specifically excluded therefrom at page 613 of the Commission's original report therein, 248 I. C. C. 545, wherein it stated that the increased rates and charges were not prescribed within the meaning of *Arizona Grocery Co.* v. *Atchison, T. & S. F. Ry. Co.*, 284 U. S. 370.

In further support of said finding reference was made to Passenger Fares and Surcharges, 214 I. C. C. 174, wherein the Commission in 1936 fixed a maximum coach fare of 2 cents per passenger mile throughout the United States but at the same time found that the existing coach fares main-

tained by certain southern railroads was not unreasonable or otherwise unlawful.

The conditions confronting the railroads in 1936 were in no wise comparable to those existing in 1942 and 1943. *Atchison, T. & S. F. Ry. Co.* v. *United States*, 284 U. S. 248.

The mere reference to preceding decisions rendered under different circumstances and conditions and for different purposes, without incorporating any part of the evidence in such cases into the record of pending proceedings, falls far short of the evidence required by law to sustain the reasonableness of the interstate fares.

E. Cases Sustaining the Supreme Court Jurisdiction of the Appeal

State of New York v. *United States*, 257 U. S. 591.
Florida v. *United States*, 282 U. S. 194.
United States v. *Louisiana*, 290 U. S. 70.
First National Bank v. *Louisiana Tax Commission*, 289 U. S. 60, 62.
United States v. *American Sheet & Tin Plate Co.*, 301 U. S. 402, 405, 406.

F. The Question is Substantial

The order of the Interstate Commerce Commission, which plaintiffs seek to have enjoined, set aside and annulled, will require the intrastate passengers of Alabama, Kentucky and Tennessee to pay to the railroads of these states approximately $1,750,000 additional revenues per annum. Of even greater moment, however, is that the decision of the District Court, if sustained, will give the Interstate Commerce absolute power to increase any intrastate rate or fare up to the level of the corresponding interstate rate or fare, irrespective of the carriers' need of revenues and regardless of the reasonableness of the existing intrastate

rates and fares, and thereby deprive the respective state regulatory bodies of their jurisdiction over said rates and fares.

For these reasons plaintiffs submit that the question presented by this appeal is substantial.

G. Decree, Findings of Fact and Conclusions of Law, and Opinion of the District Court

Appended to this statement is a copy of the Decree, a copy of the Findings of Fact and Conclusions of Law, and copy of the Opinion of said Court sought to be reviewed.

Plaintiffs, therefore, respectfully submit that the Supreme Court of the United States has jurisdiction of the appeal.

WILLIAM N. MCQUEEN,
Acting Attorney General;
FORMAN SMITH,
Assistant Attorney General;
Attorneys for The State of Alabama and Public Service Commission.
LEON JOUROLMON, JR.
Attorney for The State of Tennessee and the Railroad and Public Utilities Commission of the State of Tennessee.
ELDON S. DUMMIT,
Attorney General of the Commonwealth of Kentucky;
M. B. HOLIFIELD,
Assistant Attorney General of the Commonwealth of Kentucky;
J. E. MARKS,
Attorneys for Commonwealth of Kentucky and Railroad Commission of Kentucky.

Dated September 1, 1944.

APPENDIX "1"

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF KENTUCKY, LOUISVILLE DIVISION

Action No. 706

THE STATE OF ALABAMA AND PUBLIC SERVICE COMMISSION, Plaintiffs,

versus

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, Defendants.

Action No. 707

THE STATE OF TENNESSEE AND THE RAILROAD AND PUBLIC UTILITIES COMMISSION OF THE STATE OF TENNESSEE, Plaintiffs,

versus

UNITED STATES OF AMERICA, AND INTERSTATE COMMERCE COMMISSION, Defendants.

Action No. 708

COMMONWEALTH OF KENTUCKY AND RAILROAD COMMISSION OF KENTUCKY, Plaintiffs,

versus

UNITED STATES OF AMERICA, Defendant.

Decree

These actions having been consolidated and having been heard before the undersigned, constituting a Special District Court of three judges convened pursuant to Title 28 United States Code Section 47, and said Court having considered the evidence taken before the Interstate Commerce Commission and the report of said Commission in each case, and having considered the arguments and briefs of respective counsel, and the consolidated cause having been sub-

mitted for final judgment, and the Court being sufficiently advised and having made its findings of fact and conclusions of law which are filed herein:

Now, Therefore in accordance with such findings of fact and conclusions of law and for the reasons given by the Court in its opinion of this date filed herein,

It is ordered, adjudged and decreed that the injunction prayed for in each action be denied, and that each of said complaints be and is hereby dismissed.

This 3rd day of August, 1944.

(s) ELWOOD HAMILTON,
U. S. Circuit Judge for Sixth Circuit
(s) MAC SWINFORD,
U. S. District Judge, Eastern and Western Districts of Kentucky
(s) SHACKELFORD MILLER, JR.
U. S. District Judge, Western District of Kentucky.

APPENDIX "2"

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF KENTUCKY, LOUISVILLE DIVISION

Action No. 706

THE STATE OF ALABAMA AND PUBLIC SERVICE COMMISSION, Plaintiffs,

versus

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, Defendants.

Action No. 707

THE STATE OF TENNESSEE AND THE RAILROAD AND PUBLIC UTILITIES COMMISSION OF THE STATE OF TENNESSEE, Plaintiffs,

versus

UNITED STATES OF AMERICA, AND INTERSTATE COMMERCE COMMISSION, Defendants.

Action No. 708

COMMONWEALTH OF KENTUCKY AND RAILROAD COMMISSION OF KENTUCKY, Plaintiffs,

versus

UNITED STATES OF AMERICA, Defendant

Findings of Fact and Conclusions of Law

Findings of Fact

1. On June 1st, 1936 the Interstate Commerce Commission found in a proceeding then duly pending before it that the basic fare of 3.6 cents per passenger mile on interstate passenger coach travel in the territory south of the Ohio and Potomac Rivers and east of the Mississippi River was unreasonable to the extent that it exceeded 2 cents per

passenger mile. Pursuant to said findings the basic interstate coach fare was on June 1st, 1936 reduced from 3.6 cents to 2 cents per passenger mile.

2. The Interstate Commerce Commission by order of January 21, 1942 in a proceeding properly pending before it authorized an increase of 10% in the interstate passenger coach fares effective February 10, 1942, thus raising the interstate passenger coach fare to 2.2 cents per passenger mile.

3. Shortly after October 1, 1942 the southern railroads filed with the Public Service Commission of Alabama, the Railroad and Public Utilities Commission of Tennessee and the Railroad Commission of Kentucky certain traffic schedules to become effective December 1, 1942, designed to raise the intrastate passenger coach fares in the respective states to the level of the corresponding interstate fares. Each State Commission held an investigation and hearing and in each instance found that the evidence presented did not justify the increase sought. The proposed increases were denied in each instance.

4. On March 17, 1943 the railroads operating in Alabama filed with the Interstate Commerce Commission a petition seeking an investigation under Sections 3, 13 and 15 of the Interstate Commerce Act of intrastate passenger coach fares in Alabama. On June 24, 1943 the Kentucky railroads instituted similar proceedings before the Interstate Commerce Commission for authority to permit increases in Kentucky intrastate passenger coach fares, and at approximately that time the Tennessee railroads also instituted such proceedings with respect to the intrastate coach fares in Tennessee. The Interstate Commerce Commission consolidated all the proceedings before it, and after taking evidence and holding hearings issued its report and findings on March 25, 1944 under the style and docket number of Alabama Intrastat Fares-No. 28963. The Commission found that the interstate coach fares in effect in Alabama, Kentucky and Tennessee were just and reasonable; that the intrastate coach fares in said states were lower than the corresponding fares applicable interstate and intrastate gen-

erally throughout southern territory; that the conditions affecting transportation of passengers in coaches within these three states, intrastate on the one hand, and interstate to, from, and through these states on the other, were substantially similar; that interstate passengers in these states traveled in the same train and generally in the same cars with intrastate passengers, but were forced to pay higher fares than the intrastate passengers for like service; that the railroads' revenues under the lower intrastate fares were less by at least $725,000 per annum in Alabama, $500,000 in Kentucky, and $525,000 in Tennessee than they would be if those fares were increased to the level of the corresponding interstate fares, and that traffic moving under these lower intrastate fares was not contributing its fair share of the revenues required to enable the railroads to render adequate and efficient transportation service; that the maintenance of intrastate coach fares in these states to the extent that such fares are on a lower level than the corresponding interstate fares caused and would cause undue, unreasonable and unjust discrimination against interstate commerce, and that this unlawfulness should be removed by increasing the intrastate fares in the respective states to the level of the corresponding interstate fares contemporaneously maintained by the railroads to, from, and through such states.

5. Thereafter by order dated May 8, 1944 in said consolidated proceedings the Interstate Commerce Commission ordered the railroads operating in Alabama, Tennessee and Kentucky to cease on or before July 1, 1944 from practicing the unjust discrimination found by it to exist, and thereafter to maintain and apply passenger fares for intrastate transportation in the respective states on bases no lower than the passenger fares then maintained and applied by the railroads for like accommodations in interstate transportation to, from and through the respective states. The effective date of this order was thereafter postponed until August 15, 1944.

6. The said findings of the Interstate Commerce Commission in Alabama Intrastate Fares No. 28963 are supported by substantial evidence.

Conclusions of Law

1. The order of the Interstate Commerce Commission of May 8, 1944, which is sought to be set aside in these proceedings is an authorized and valid order, correctly applies the proper principles of law to the facts so found by it and approved in these proceedings, and is not arbitrary and unreasonable.

2. The Interstate Commerce Commission properly required on the evidence before it and its findings of fact substantially supported by said evidence that the railroads operating in Alabama, Tennessee and Kentucky establish and maintain intrastate coach fares for passengers on bases no lower than the existing interstate fares.

Wisconsin Ry. Commission v. *C. B. & Q. R. R. Co.* 257 US 563.
New York v. *United States* 257 US 591.
United States v. *Louisiana* 290 US 70.
Florida v. *United States* 292 US 1.
Illinois Commerce Commission v. *United States* 292 US 474.
Vinson v. *Washington Gas Co.* 321 US 489.
Interstate Commerce Commission et al. v. *The City of Jersey City et al. U. S. Supreme Court*, May 29, 1944.

3. The injunction prayed for in each of the three actions is denied and the proceedings should be dismissed in each instance.

(s) ELWOOD HAMILTON,
U. S. Circuit Judge, Sixth Circuit

(s) MAC SWINFORD,
U. S. District Judge, Eastern and Western Districts of Kentucky

(s) SHACKELFORD MILLER, JR.
U. S. District Judge, Western District of Kentucky.

August 3rd, 1944.

APPENDIX "3"

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF KENTUCKY LOUISVILLE DIVISION.

Action No. 706

THE STATE OF ALABAMA AND PUBLIC SERVICE COMMISSION, Plaintiffs,

versus

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, Defendants

Action No. 707

THE STATE OF TENNESSEE AND THE RAILROAD AND PUBLIC UTILITIES COMMISSION OF THE STATE OF TENNESSEE, Plaintiffs,

versus

UNITED STATES OF AMERICA AND THE INTERSTATE COMMERCE COMMISSION, Defendants

Action No. 708

COMMONWEALTH OF KENTUCKY AND RAILROAD COMMISSION OF KENTUCKY, Plaintiffs,

versus

UNITED STATES OF AMERICA, Defendant

On Application for Injunction

Argued July 17, 1944. Decided August 3, 1944.

Before Hamilton, Circuit Judge, and Swinford and Miller, District Judges.

Wm. N. McQueen, Acting Attorney General and Foreman Smith, Assistant Attorney General for the State of Alabama and Alabama Public Service Commission; Leon Jourolmon, Jr., for the State of Tennessee and the Rail-

road and Public Utilities Commission of the State of Tennessee; Eldon S. Dummit, Attorney General, M. B. Holifield, Assistant Attorney General and J. E. Marks for the Commonwealth of Kentucky and the Railroad Commission of Kentucky; Daniel W. Knowlton, Chief Counsel and Allen Crenshaw, Attorney for the Interstate Commerce Commission; W. L. Grubbs, E. A. Smith, Charles Clark, Jos. P. Cook, Y. D. Lott, H. L. Walker and Frank W. Gwathmey for the Intervening Railroads; Richard H. Field, General Counsel, David F. Cavers, Assistant General Counsel, Bernard H. Fitzgerald, Transportation Counsel and M. D. Miller, Attorney for Economic Stabilization Director and the Price Administrator; Eli H. Brown III, United States District Attorney, and Robert L. Pierce, Special Assistant to the Attorney General, for the United States of America.

OPINION

MILLER, District Judge:

The State of Alabama, the State of Tennessee, and the Commonwealth of Kentucky filed these respective actions on June 12, 1944 against the United States of America and the Interstate Commerce Commission to enjoin and set aside an order entered by the Interstate Commerce Commission on May 8, 1944 which required the railroads operating in those three states to establish on or before July 1, 1944 certain minimum intrastate fares for transportation of persons in railway coaches which would raise said intrastate fares in the respective states to the level of corresponding interstate fares contemporaneously maintained by the railroads to, from and through such states, The Interstate Commerce Commission has postponed the effective date of its order to August 15, 1944 to provide a reasonable opportunity for a hearing and consideration by the Court of the issues presented. In compliance with the provisions of 28 USCA, Section 47 a three-judge court was duly convened, which after consolidating the three actions by agreement of the parties held the prescribed hearing. The matter is submitted for final judgment.

For many years prior to 1936 the basic interstate passenger coach fare of Class 1 American railroads was 3.6

cents per passenger mile. However, during the period of from December 1, 1933 through November 14, 1937 most of the railroads operating in the territory south of the Ohio and Potomac Rivers and east of the Mississippi River published and maintained an interstate passenger coach fare of 1.5 cents per passenger mile for one-way trips, and a 10% lower fare or 1.35 cents per passenger mile for round trips. During this same period other southern railroads maintained an interstate passenger coach fare of 2 cents per passenger mile. In a proceeding known as Docket 26550, Passenger Fares and Surcharges, decided February 28, 1936, and reported in 214 ICC 174, the Interstate Commerce Commission found that the basic fare of 3.6 cents per passenger mile on interstate passenger coach travel was unreasonable to the extent that it exceeded 2 cents per passenger mile. In the same proceeding the Commission found that the interstate coach fare then being maintained and charged by some of the southern railroads, of 1.5 cents one-way and 1.35 cents round-trip was not unreasonable. Pursuant to the findings in that proceeding the basic interstate coach fare was reduced from 3.6 cents to 2 cents per passenger mile on June 1, 1936. In a proceeding known as Ex Parte 148, Increased Railway Rates, Fares and Charges, 1942, 242 ICC 545, the Commission by order of January 21, 1942 authorized an increase of 10% in the interstate passenger coach fares effective February 10, 1942, thus raising the interstate passenger coach fare to 2.2 cents per passenger mile. This increase was for the purpose of taking care of increased expenses of the railroads incident to the war period and was limited to the duration of the war and six months thereafter. The southern railroads which had been charging since December 1935 interstate passenger coach fares of 1.5 cents one-way and 1.35 cents round-trip increased these fares on November 15, 1937 to 2 cents one-way and 1.8 cents round-trip, and on January 15, 1939 again reduced said fares to 1.5 cents one-way and 1.35 cents round-trip. Pursuant to the order in Ex Parte 148 Increased Railway Rates, Fares and Charges 242 ICC 545, these railroads on February 10, 1942 increased the fares 10%, which made them

1.65 cents one-way and 1.485 cents round-trip. On October 1, 1942 these fares were again increased to 2.2 cents one-way and 1.98 cents round-trip, which fares are still in effect.

Shortly after October 1, 1942 when the railroads increased their interstate passenger fares to 2.2 cents per mile they filed with the Public Service Commission of Alabama, the Railroad and Public Utilities Commission of Tennessee and the Railroad Commission of Kentucky certain tariff schedules to become effective December 1, 1942 designed to raise the intrastate passenger coach fares in the respective states to the level of the corresponding interstate fares. Each State Commission held an investigation and hearing. The Public Service Commission of Alabama found that the railroads had failed to show that they needed any additional revenue, that on the contrary they had ample revenue to take care of their operating expenses and in addition earn a reasonable return on their investment, and that the difference between interstate and intrastate fares did not create any unreasonable discrimination or undue prejudice. The Railroad and Public Utilities Commission of Tennessee found that the carriers had presented no evidence which would justify the increase sought by them and ordered that the existing fares be maintained as just and reasonable. The Railroad Commission of Kentucky found that the proposed increases in coach fares within that state were not shown by the evidence to be just and reasonable, and that while the uniformity sought by the railroads between the interstate and intrastate fares was desirable, uniformity alone was not a sufficient justification for the substantial increases proposed in the coach fares. The proposed increases were denied in each instance.

On March 17, 1943 the railroads operating in Alabama filed with the Interstate Commerce Commission a petition seeking an investigation under Sections 3, 13 and 15 of the Interstate Commerce Act of intrastate passenger coach fares in Alabama. On June 24, 1943 the Kentucky railroads instituted similar proceedings before the Interstate Commerce Commission for authority to permit increases in Kentucky intrastate passenger coach fares, and at approximately that time the Tennessee railroads also institu-

ted such proceedings with respect to the intrastate coach fares in Tennessee. The Alabama, Kentucky and Tennessee proceedings were docketed respectively as No. 28963, No. 29000, and No. 29037. The railroads operating in North Carolina filed similar proceedings which were docketed under No. 29036, but the ruling hereinafter referred to with respect to the rates in North Carolina is not involved in the three cases now before this Court. The Interstate Commerce Commission consolidated all of the proceedings before it. After taking evidence and holding hearings the Commission on March 25, 1944 issued its report and findings under the style and docket number of Alabama Intrastate Fares No. 28963. Specific findings were made as follows:

"1. The interstate one-way and round-trip coach fares now in effect to, from, and through points in Alabama, Kentucky, North Carolina and Tennessee, and the interstate round-trip fares applicable in sleeping and parlor cars now in effect to, from, and through points in Alabama and Tennessee, are just and reasonable.

2. The intrastate one-way and round-trip coach fares in Alabama, Kentucky, North Carolina, and Tennessee, with certain exceptions hereinbefore referred to and not here in issue, and the intrastate round-trip fares applicable in sleeping and parlor cars in Alabama and Tennessee, are lower than the corresponding fares applicable interstate and intrastate generally throughout southern territory, except in the several States mentioned in this finding.

3. The conditions affecting the one-way and round-trip transportation of passengers in coaches within these four States, and the round-trip transportation of passengers in sleeping and parlor cars within Alabama and Tennessee, intrastate on the one hand, and interstate to, from, and through those respective States on the other, are substantially similar.

4. Interstate passengers in these States travel in the same train and generally in the same cars with

intrastate passengers, but are forced to pay higher fares than the intrastate passengers for like services, to the undue and unreasonable advantage and preference of the intrastate passengers and the undue and unreasonable disadvantage and prejudice of the interstate passengers.

5. Respondents' revenues under the lower intrastate fares are less by at least $725,000 per annum in Alabama, $500,000 in Kentucky, $525,000 in North Carolina, and $525,000 in Tennessee than they would be if those fares were increased to the level of the corresponding interstate fares, and traffic moving under these lower intrastate fares is not contributing its fair share of the revenues required to enable respondents to render adequate and efficient transportation service.

6. The maintenance of intrastate one-way and round-trip coach fares in Alabama, Kentucky, North Carolina, and Tennessee, and of intrastate round trip fares applicable in sleeping and parlor cars in Alabama and Tennessee, to the extent that such fares are on a lower level than the corresponding interstate fares, causes and will cause undue and unreasonable advantage to and preference of persons in intrastate commerce, undue and unreasonable disadvantage to and prejudice against persons in interstate commerce, and undue, unreasonable, and unjust discrimination against interstate commerce; and this unlawfulness should be removed by increasing the aforesaid intrastate fares in the respective States to the level of the corresponding interstate fares contemporaneously maintained by respondents to, from, and through such States; provided, that the aggregate charge made by any of the respondents for the intrastate transportation in any of the States shall not exceed the aggregate charge made for like accommodations and for a like distance by the same respondent for interstate transportation to, from, or through such State.

The foregoing findings are without prejudice to the right of the authorities of the affected States, or of any interested party, to apply for modification thereof

as to any specific intrastate fare on the ground that such fare is not related to interstate fares in such a way as to contravene the provisions of the Interstate Commerce Act."

The Commission made no order at that time but stated—

"In accordance with our practice in such proceedings, we shall leave to respondents and the respective State Commissions the matter of adjusting the intrastate fares to conform to these findings. If this is not accomplished within 30 days from the service of this report, consideration will be given to the entry of an appropriate order."

The State Commissions of Alabama, Tennessee and Kentucky promptly filed applications for reconsideration which were denied by the Interstate Commerce Commission, following which a final corrected order was entered in said proceedings dated May 8th, 1944. By this order the railroads operating in Alabama, Tennessee and Kentucky were ordered to cease and desist on or before July 1, 1944 "from practicing the undue prejudice and preference and the unjust discrimination found in said report to exist * * * and thereafter to maintain and apply passenger fares for intrastate transportation in the respective states which shall be on bases no lower than the passenger fares presently maintained and applied by the respective respondents for like accommodations in interstate transportation to, from, and through the respective States; provided, that the resulting aggregate charge made by any of said respondents for intrastate transportation in any of the states shall not exceed the aggregate charge made for like accommodations and for a like distance by the same respondents in interstate transportation to, from, or through such State." The three State Commissions thereafter filed these three actions in the United States District Court for the Western District of Kentucky, stating in each instance that the Louisville & Nashville Railroad Company, one of the carriers which filed the petitions before the Interstate Commerce Commission, is a Kentucky corporation with its

residence and principal office in said Federal Judicial District. The complaints after stating the foregoing facts in detail allege that the corrected order of the Interstate Commerce Commission of May 8, 1944 constitutes an unwarranted and unjustified invasion of the sovereignty of the State in that it exceeds the powers granted to the Federal Congress by the Commerce Clause of Section 8 of Article 1 of the Constitution of the United States; that said order contravenes the Fifth and Tenth Amendments of said Constitution; that there was no evidence before the Commission to support the report, findings and order made by it; that the corrected order of May 8, 1944 is in contravention of the stabilization program of the Federal Government as embodied in the Emergency Price Control Act of 1942 and its Amendment of October 2, 1942; and that unless said order is set aside and annulled innumerable citizens in the respective states will suffer irreparable injury and damage in the form of excessive passenger fares in intrastate transportation and the respective State commissions will be deprived of their right to regulate intrastate commerce and intrastate passenger fares on railroads operating in said States. Fred M. Vinson, Director of the Office of Economic Stabilization, through Chester Bowles, Price Administrator of the Office of Price Administration, moved to file, and was permitted to do so, an intervening petition in which he attacks the corrected order of May 8, 1944 as being invalid by reason of its failure properly to interpret and apply its constitutional and statutory authority to protect interstate commerce from undue and unreasonable burdens from intrastate commerce and also by its failure to accommodate the exercise of its powers to the congressional policies embodied in the Emergency Price Control Act of 1942 and the Stabilization Act of October 2, 1942. The Interstate Commerce Commission by its answers alleges that the proceedings, report and orders herein involved indirectly and collaterally related to previous consideration, decisions, and orders of the Commission in respect to the determination of reasonable passenger fares in interstate commerce particularly with reference to such fares in southern passenger association territory, generally located east of the Mississippi River and south of the Ohio

and Potomac Rivers, such consideration and decisions covering a period of many years prior to the report involved in this action; that its findings and conclusions in its report of March 25, 1944 were fully supported and justified by the evidence submitted; and that the order of May 8, 1944 was not entered either arbitrarily or unjustly or without evidence to support it and was within the authority conferred upon the Commission by law. The railroads' motions to intervene were sustained and they filed intervening answers adopting the answer filed on behalf of the Interstate Commerce Commission. The United States of America filed an answer pointing out that the proceedings presented a situation where one Government agency was opposing another Government agency, and in view of the fact that both Government agencies would have an opportunity to present their respective positions by their own counsel it would take a neutral position without prejudice to its later support of one or the other agency in any appeal that might be taken from the decree of the Court.

Jurisdiction of the District Court is conferred by Section 41 (28) Title 28 United States Code. The venue of the present suits in the United States District Court for the Western District of Kentucky is provided by Section 43, Title 28 United States Code. The procedure herein followed is provided by Sections 44 through 48, Title 28 United States Code.

Section 15 of the Interstate Commerce Act (Section 15 Title 49 United States Code) empowers the Interstate Commerce Commission to make investigation and hold hearings following any complaint by an authorized party as to the reasonableness of any existing rate. If, following such investigation and hearing, the Commission is of the opinion that the rate is unjust or unreasonable or unjustly discriminatory or unduly preferential or prejudicial, it is authorized and empowered to determine and prescribe what will be the just and reasonable rate to be thereafter observed in such case. Section 13 of the Act (Section 13, Title 49 United States Code) authorizes any person, firm or corporation, or any common carrier or any State Railway Commission to make complaint to the Commission and have an investigation by the Commission of the matters com-

plained of. It also authorizes the Commission to institute such an inquiry at any time on its own motion. Subsection 4 of Section 13 provides that whenever in any such investigation the Commission finds that any rate causes any undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce on the one hand and interstate commerce on the other hand, or any undue, unreasonable or unjust discrimination against interstate commerce, which is declared to be unlawful by the Act, it shall prescribe the rate thereafter to be charged in such manner as in its judgment will remove such advantage, preference, prejudice or discrimination, and that such rate shall be observed by the carrier, *the law of any State or the decision or order of any State authority to the contrary notwithstanding.* The State Commissions recognize the constitutionality of this legislation, which has been many times upheld, but they contend, and rightly so, that the power of the Commission to fix intrastate rates is limited to the two situations of (1) where the evidence shows a preference as between persons or localities in intrastate commerce on the one hand and interstate commerce on the other hand, and (2) where the evidence shows any unreasonable or unjust discrimination against interstate commerce. Any attempt on the part of the Interstate Commerce Commission to regulate intrastate rates where one of these two situations does not exist would be in conflict with the Tenth Amendment to the United States Constitution. Section 15 of the Interstate Commerce Act imposed an affirmative duty on the Interstate Commerce Commission to fix rates and to take other important steps to maintain an adequate railway service for the people of the United States. Intrastate rates constitute a very important part in maintaining such an adequate national railway system. Gross revenue from intrastate transportation is a little less than one-third of the gross revenue from interstate transportation. If intrastate rates are fixed at a substantial lower level than interstate rates, the share which intrastate traffic will contribute will be proportionately less. If the railways are to earn a fixed net percentage of income, the lower the intrastate rates, the higher the interstate rates will have to be. The effective operation of the Act

justly requires that intrastate traffic should pay a fair proportionate share of the cost of maintaining an adequate railway system. The Supreme Court has on numerous occasions recognized this dovetail relation between the purpose of Section 15 of the Act and the authority of the Commission under Section 13(4) of the Act to remove undue or unjust discrimination against interstate commerce. Accordingly, when that purpose is interfered with by a disparity of intrastate rates the Commission is authorized to end the disparity by a proper adjustment of the intrastate rates in question. Wisconsin Railroad Commission *v.* Chicago, Burlington and Quincy Railroad Co., 257 U. S. 563; New York *v.* United States, 257 U. S. 591; Houston and Texas Ry. *v.* United States, 234 U. S. 342; Florida *v.* United States, 292 U. S. 1; United States *v.* Louisiana, 290 U. S. 70. Accordingly, the Interstate Commerce Commission was fully authorized and empowered to order the adjustment of purely intrastate rates in Alabama, Tennessee and Kentucky if the evidence introduced in the investigation and hearing proved the existence of either of the two situations above referred to.

In these proceedings it is not the province of the Court to review the evidence before the Commission for the purpose of making its own findings of fact. It is a well settled rule of administrative law that the functions of a reviewing court are limited to deciding whether or not there was sufficient evidence to support the findings of fact of the administrative board and whether or not the correct rule of law was applied to the facts so found. Although reasonable persons may differ with the findings of fact by the administrative board upon the evidence before it, yet if it appears from the record that such findings are supported by substantial evidence the law makes the board's findings on such facts conclusive. The Interstate Commerce Commission, et al. *v.* The City of Jersey City, et al., U. S. Supreme Court May 29, 1944; Helvering *v.* National Grocery Company, 304 U. S. 282, 294; St. Joseph Stock Yards Company *v.* United States, 298 U. S. 38, 51; Ohio *v.* United States, 292 U. S. 498, 506; Interstate Commerce Commission *v.* Union Pacific R. Co., 222 U. S. 541, 547. It naturally follows that if the administrative board applied the correct rule of law

to the facts so found, its final order in the case must be affirmed. Federal Power Commission *v.* Natural Gas Pipeline Co., 315 U. S. 575, 586; Helvering *v.* Rankin, 295 U. S. 123, 131; Virginian Ry. *v.* United States, 272 U. S. 658, 663.

The validity of the Commission's order of May 8th, 1944 rests primarily upon the basic fact that interstate coach fares to, from and through the three states in question are just and reasonable. Unless that fact is first established there is no basis for a finding of discrimination against interstate commerce. Georgia Public Service Commission *v.* United States, 283 U. S. 765; United States *v.* Louisiana, 290 U. S. 70. The Commission so found in its first finding of fact. We review the record merely to determine if that finding is supported by substantial evidence. The Commission had before it evidence showing the history of both interstate and intrastate fares and the statistical data with respect to the principal railroads operating in Alabama, Tennessee and Kentucky. It had but recently completed a very extensive investigation of freight rates and passenger fares throughout the country in a proceeding before it docketed as Increased Railway Rates, Fares and Charges, 1942, 248 I. C. C. 545, commonly referred to as Ex Parte 148. On January 21, 1942 it entered a preliminary order in that proceeding authorizing a general increase of 10% in passenger fares as proposed by the carriers, finding as it did so that the increase in fares proposed was necessary to enable the carriers to continue to render adequate and efficient railway transportation service during the present emergency, and that the evidence before it showed that the proposed increased fares were reasonable. This finding was renewed and affirmed in the later report of March 2, 1942. On January 4, 1943 the proceeding was reopened for further hearing in response to petitions filed by the Office of Price Administration, various state regulatory bodies and others, who claimed that the financial condition of the railroads had so improved since the original decision, chiefly by subsequent increase in the volume of traffic, as to render unnecessary the continuance of the increase previously authorized. Some of these protestants also claimed that the increases were inflationary in effect, and incompatible with the principles of the economic policy adopted

by Congress to prevent inflation. Following the hearing of further evidence in that proceeding in February 1943, which included the latest available report of railroad earnings, as well as forecasts made by a witness of the Office of Price Administration respecting anticipated earnings for the entire year of 1943, the Commission suspended until January 1, 1944 the increases in freight charges previously authorized, and also cancelled the increases authorized by transportation commutation fares, but declined to modify the previous increases in passenger fares. In its report of April 6, 1943 it pointed out that the evidence showed that passenger traffic had failed for many successive years to pay its proper share of railway expenses, and that only with the large volume of traffic and passenger revenue was the 1942 passenger deficit currently eliminated. It found that under then existing conditions the revenues received by the railroads for the remainder of 1943, if their freight rates and charges were so reduced, would meet the objectives of the national transportation policy as defined in the Interstate Commerce Act. On October 11, 1943 the Commission denied petitions filed by the Office of Price Administration and the Alabama and North Carolina Commissions seeking a further investigation of interstate passenger fares in the South. In a 3rd report in Ex Parte 142 dated November 8, 1943, and also in a 4th report in the same proceeding; dated May 8th, 1944, the suspension of freight rate increases was further successively extended to June 30, 1944 and then to December 31, 1944, but the increase in passenger coach fares was allowed to stand. The Commission in making its order of May 8, 1944 had this previous investigation before it and was not required for the purpose of making a finding in the three proceedings then pending before it to retrace or duplicate this work just recently and carefully completed. Administrative procedure necessarily results in the existence of a gap between the time when the record evidence is closed and the time the administrative decision is later promulgated, which makes it possible and permissible for the Commission, in its discretion, to review or supplement its findings by consideration of evidence subsequently developing instead of rehearing the matter in its entirety. Illinois Commerce Commission *v.* United

States, 292 U. S. 474, 480-481; Interstate Commerce Commission, et al. *v.* The City of Jersey City, et al., United States Supreme Court May 29, 1944. No doubt the Commission, if necessary, could have taken judicial notice of all of its previous rulings just referred to. Butler *v.* Eaton, 141 U. S. 240; Freshman *v.* Atkins, 269 U. S. 121; National Fire Insurance Co. *v.* Thompson, 281 U. S. 331, 336; Kelly *v.* Johnson, 111 Fed. (2) 613, 615. But in any event such evidence was admissible in the administrative hearing, which is not bound by the strict and technical rules of evidence prevailing in common law trials. It appears well settled that an administrative board has a much broader consideration of facts having a material bearing upon the issue presented than has a jury. Opp Cotton Mills *v.* Administrator, 312 U. S. 126, 154-155; Spiller *v.* Atchison T. and S. F. R. Co., 253 U. S. 117; Interstate Commerce Commission *v.* Baird, 194 U. S. 25; United States *v.* Interstate Commerce Commission, 290 Fed. 264; Tagg Bros. and Moorhead *v.* United States, 280 U. S. 420; Wigmore on Evidence 3rd Edition, Sections 4a and 4b and 4c (26 at Page 70). These previous investigations and conclusions were supplemented with current statistical data and evidence of increased operating costs largely attributable to war-time conditions. It is true that the same war-time conditions have greatly increased the revenues of the carriers, but it has been with resulting unusual wear and tear on equipment. The question presented was a complex one involving new and changing factors of indefinite duration. "The process of rate making is essentially empiric. The stuff of the process is fluid and changing—the resultant of factors that must be valued as well as weighed. Congress has therefore delegated the enforcement of transportation policy to a permanent expert body and has charged it with the duty of being responsive to the dynamic character of transportation problems." Board of Trade *v.* United States, 314 U. S. 534, 546. In our opinion the evidence was sufficient to sustain this finding of the Commission.

The 2nd and 5th findings of the Commission appear not to be seriously contested by the petitioners, and in any event are fully sustained by the evidence.

The 3rd and 4th findings of the Commission to the effect that the conditions affecting intrastate transportation in the three states on the one hand and interstate transportation to, from and through those respective states on the other hand are substantially similar, and that interstate passengers in these states travel in the same trains and generally in the same cars with the intrastate passengers, but are forced to pay higher fares than the intrastate passengers for the like service, are contested by the petitioners, but a review of the record discloses substantial evidence to support these findings. It is conceded by the railroads that the streamlined deluxe trains offer to the traveling public a much higher standard of service than other regular trains or so-called local trains, but in the great majority of cases the streamlined or deluxe trains are available to and actually carry both interstate passengers and intrastate passengers. In a few instances their schedules do not provide for but one regular stop within a state; which prevents the transportation of intrastate passengers within that state, but such a schedule is apparently necessary in order to provide that type of service, and considering both that fact and the relatively insignificance of this type of transportation it can be largely disregarded in making the general findings referred to. That part of finding No. 4 which states that the payment by interstate passengers of a higher fare than is paid by the intrastate passengers is to the undue and unreasonable disadvantage and prejudice of the interstate passengers may or may not be sufficiently supported by the evidence to justify its finding, but in view of finding No. 6, hereinbelow referred to, it becomes unnecessary to decide that point.

The Commission found as finding No. 6 that the maintenance of the existing lower intrastate coach fares in Alabama, Tennessee, and Kentucky causes undue, unreasonable and unjust discrimination against interstate commerce, which should be removed by increasing intrastate fares in respective states to the level of the corresponding interstate fare to, from and through such states. The evidence showed that the disparity in rates causes the railroads' revenues to be substantially less than they would be if the intrastate fares were increased to the interstate fare level, and that

this disparity is such that passengers destined to points outside the respective states were encouraged to purchase intrastate tickets to points near the state line and then either buy tickets or pay cash for the remainder of the journey, thus using the lower intrastate fare to defeat the higher interstate fare. The two classes of traffic are inextricably intermingled; the same railways and the same cars carry both passengers; the same men operate the train in its intrastate journey and in its interstate journey. Under such conditions the effect of maintaining a materially lower rate intrastate than the reasonable interstate rate necessarily results in intrastate traffic failing to pay a fair proportionate share of the cost, maintenance and operation and is discriminatory against interstate traffic. Wisconsin Railway Commission *v.* C. B. & Q. R. R. Co., 257 U. S. 563; New York *v.* United States 257 U. S. 591; United States *v.* Louisiana, 290 U. S. 70; Florida *v.* United States, 292 U. S. 1; Illinois Commerce Commission *v.* United States, 292 U. S. 474. The existence of such discrimination against interstate commerce, regardless of the non-existence of any advantage as between persons or localities is sufficient justification for the Commission to end the disparity by ordering it removed.

Petitioners contend that existing rates yield sufficient revenue to constitute a reasonable return to the carriers, that the additional revenue from raising the intrastate rates is not necessary, and that the resulting total revenue will be materially more than the carriers are legally entitled to receive. That may be the result, at least temporarily. But the proposed increased rates are not based on the need for additional revenue. The proposed increase is for the purpose of removing an unjust discrimination against interstate commerce which the Commission is empowered to do regardless of resulting increased revenues or the non-existence of any need for the same. It may be that later, after the increase has had time to show its effect, a downward revision of both interstate and intrastate rates will be in order to meet this objection. On the other hand, present large revenues flow from abnormal traffic conditions, clearly only temporary in their nature. With the return to normal conditions, including the resumption of strong competition from trucks and busses, the

combined returns may not be unreasonable. Rate making is not confined to a consideration of results from a single calendar year or from a temporary abnormal condition. The Supreme Court recently held that the present bulge of war earnings is unreliable for use as a standard. Group of Institutional Investors *v.* Chicago, Milwaukee, St. P. and P. R. Co., 318 U. S. 523, 543. It is approved administrative practice to consider conditions over a reasonable period of years, to strike an average, in determining a basis for rate making. St. Joseph Stock Yards Co. *v.* United States, 298 U. S. 38, 46-47; South and North Alabama R. Co. *v.* Railroad Commission, 210 Fed. 465, 480.

The Economic Stabilization Director and the Price Administrator contend that in addition to the Commission's failure properly to interpret and apply its constitutional and statutory authority to protect interstate commerce from undue burdens from intrastate commerce the Commission has failed to accommodate the exercise of its powers to the congressional policies embodied in the Emergency Price Control Act of 1942 and the Stabilization Act of October 2, 1942, and that by reason thereof its order of May 8, 1944 is null and void. This brings into consideration the statutory authority under which these interveners attack the order in question and their standing in the proceedings. Section 302(c) of the Emergency Price Control Act of 1942 (50 U. S. C. A. Section 942(c)) provides:

> "Nothing in this Act shall be construed to authorize the regulation of * * * rates charged by any common carrier or other public utility."

Compare Davies Warehouse Co. *v.* Bowles, 321 U. S. 144. The Emergency Price Control Act was supplemented by the Act of October 2, 1942 which provides:

> "That no common carrier or other public utility shall make any general increase in its rates or charges which were in effect on September 15, 1942, unless it first gives 30 days notice to the President, or such agency as he may designate, and consents to the timely intervention by such agency before the Federal, State, or Municipal authority having jurisdiction to consider such increase."
>
> 50 U. S. C. A. Section 961.

While this language confers upon the executive the right to notice by the utility and requires the utility's consent that the executive be heard by the regulatory body, yet it has been held that in the absence of a clear legislative mandate to the contrary such interveners do not possess any greater rights than other interveners, and that Congress did not intend to limit in any way the existing power of the Interstate Commerce Commission over rate increases, or to give the Price Administrator any standing to make mandatory demands upon it or to take from it any part of its existing discretion. Vinson *v.* Washington Gas Company, 321 U. S. 489; Interstate Commerce Commission et al. *v.* The City of Jersey City et al., U. S. Supreme Court decided May 29, 1944. In the *Jersey City* case above referred to the Court specifically stated that the opinion of the Price Administrator is not mandatory on the Commission; that the weight to be given to the Price Administrator's contentions called for an exercise of judgment by the Commission and was for the Commission, not for the Court, to determine; that the Interstate Commerce Commission has the responsibility for maintaining an adequate system of wartime transportation, which is a very intricate problem involving many variable factors and calling for informed, expert and unbiased judgment; and that the decision of such a matter by the Commission is clearly not reviewable by the Court because it thinks differently of the weight which should be accorded by some factors in relation to others. In the hearings now under consideration, the Price Administrator was given the required notice and was afforded the opportunity of introducing evidence and of being heard. The report of the Commission refers to his evidence and to his contentions. He has accordingly had the hearing and consideration that the statute provides. He has no standing now in this Court to complain that because his views and contentions were not adopted by the Commission the Commission's order is void and of no effect. His intervention in the three cases presents no additional question to those already discussed.

In our opinion the corrected order of the Interstate Commerce Commission of May 8, 1944, herein complained of,

was within the power of the Commission and properly applied the law to its findings of fact; that these findings of fact are supported by substantial evidence; and that the order is accordingly a valid one which this Court is not authorized to review any further than as hereinabove indicated. Accordingly, the injunction prayed for in each case is denied and the respective complaints will be dismissed.

(S.) SHACKELFORD MILLER, JR.,
U. S. District Judge, Western District of Kentucky.

(4442)

FILE COPY

Office - Supreme Court, U. S.
FILED
MAR 29 1945
CHARLES ELMORE CROPLEY
CLERK

Supreme Court of the United States

OCTOBER TERM, 1944

No. 574

THE STATE OF ALABAMA AND PUBLIC SERVICE COMMISSION, THE STATE OF TENNESSEE and the RAILROAD AND PUBLIC UTILITIES COMMISSION OF THE STATE OF TENNESSEE, COMMONWEALTH OF KENTUCKY AND RAILROAD COMMISSION OF KENTUCKY, ... Appellants

vs.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION and FRED M. VINSON, Economic Stabilization Director, by Chester Bowles, Price Administrator, et al.

Appeal from the District Court of the United States for the Western District of Kentucky.

BRIEF FOR APPELLANTS, COMMONWEALTH OF KENTUCKY AND RAILROAD COMMISSION OF KENTUCKY.

ELDON S. DUMMIT
Attorney General
Frankfort, Ky.

M. B. HOLIFIELD
Assistant Attorney General
Frankfort, Ky.

J. E. MARKS
145 East High Street
Lexington 4, Ky.

Counsel for Commonwealth of Kentucky and Railroad Commission of Kentucky

March 28, 1945.

SUBJECT INDEX

		Pages
I.	Opinion of Court Below	1- 2
II.	Jurisdiction	2
III.	Question Presented	3
IV.	Statutes Involved	3
V.	Statement of the Case	4–10
	1—History of Southern Passenger Fares	4- 7
	2—History of the Proceedings	7–10
VI.	Specifications of Assigned Errors Intended to be Urged	11–12
VII.	Summary of Argument	12–13
VIII.	Argument	14–46
	A—Preliminary Statement	14–17
	B—Reasonableness of Interstate Fares	18–25
	Point 1—Decisions of Interstate Commerce Commission in Ex Parte 148 are without Probative Value	18–20
	Point 2—Statement of History of Interstate Fares Does Not Establish Their Reasonableness	21–22
	Point 3—Statistical Data and Evidence of Increased Operating Costs Were Inadequate to Sustain Raesonableness of Interstate Fares	23–25
	C—Undue Discrimination against Interstate Passengers	26–31
	Point 1—Interstate Commerce Commission was Without Power	

SUBJECT INDEX—Continued

	Pages
to Consider Testimony of Railroad Witnesses as Evidence of Discrimination Against Interstate Passengers	26–27
Point 2—Payment of Higher Fares per Mile by Interstate Passengers was not Evidence of Undue Discrimination Against Them	27–29
Point 3—Saving Clause of Commission's Order is Insufficient to Support Statewide Finding of Discrimination Against Interstate Passengers	29
Point 4—Commission's Findings of Undue Discrimination Against Interstate Passengers are Not Sustained by Opinion of Court Below	30–31
D—Undue Discrimination Against Interstate Commerce	31–44
Point 1—Mere Showing that an Increase in Intrastate Fares to Level of Interstate Fares Would Produce Increased Revenues for Carriers Does Not Constitute Evidence of Undue Discrimination Against Interstate Commerce	31–32

SUBJECT INDEX—Continued

	Pages
Point 2—Mere Ability to Defeat Interstate Fares by Use of Intrastate Fares to Border Points is not Evidence of Undue Discrimination Against Interstate Commerce	33–34
Point 3—Maintenance of Lower Fare Intrastate than Interstate, Even Though the Two Classes of Traffic are Intermingled, is not Evidence That Intrastate Traffic Fails to Pay its Fair Proportionate Share of Cost of Maintaining Adequate Railway System	34–41
Point 4—Past Losses on Passenger Traffic Do Not Constitute Evidence of Discrimination Against Interstate Commerce	41–44
E—Stabilization Program of Federal Government	45–46
Point 1—The Interstate Commerce Commission and Court Below Failed to Accord Any Weight to the Stabilization Program of the Federal Government	45–46
CONCLUSION	46
APPENDIX	47–49

ALPHABETICAL LIST OF CASES CITED

	Pages
Alabama Intrastate Fares, 258 I.C.C. 133	2, 9
Baltimore & O. S. W. R. Co. v. Settle, 260 U. S. 166	34
Export and Domestic Rates, 8 I.C.C. 214	22
Federal Power Commission v. Natural Gas Pipe Line Co., 315 U. S. 575	43
Fifteen Per Cent Case, 1931, 178 I.C.C. 539	36
First National Bank v. Louisiana Tax Commission, 289 U. S. 60	2
Florida v. United States, 282 U. S. 194 (First Florida Log Case)	16, 28, 31, 41
Florida v. United States, 292 U. S. 1 (Second Florida Log Case)	36
Houston, East and West Texas Railway Co. v. United States, 234 U. S. 342 (The Shreveport Case)	14
Illinois Commerce Com. v. United States, 292 U. S. 474	36, 37
Increased Railway Rates, Fares and Charges, 1942, 248 I.C.C. 545 (Ex Parte 148)	5, 6, 7, 12, 18, 19, 20, 40
Increased Rates, 1920, 58 I.C.C. 220	4, 36
Institutional Investors v. Chicago, M. St. P. & P. R. Co., 318 U. S. 523	42
Interstate Commerce Commission v. Louisville & N. R. Co., 227 U. S. 88	20
Kentucky Intrastate Fares, 258 I.C.C. 135	8, 9, 11, 12, 19, 20, 21, 24, 26, 37
Louisville & N. R. Co. v. Finn, 235 U. S. 601	22
Louisville & N. R. Co. v. Kentucky Railroad Commission, 214 Fed. 465	22
Passenger Fares and Surcharges, 214 I.C.C. 174	4, 5, 6, 19, 20, 21, 23

ALPHABETICAL LIST OF CASES CITED—Continued

Pages

Passenger Fares and Charges in Georgia, 214 I.C.C. 567 ..... 27, 28
Railroad Comm. of Wisconsin v. Chicago, B. & Q. R. Co., 257 U. S. 563 ..... 29, 32, 35
Rates on Bananas from Gulf Ports, 30 I.C.C. 510 22
St. Joseph Stock Yards Co. v. United States, 298 U. S. 38 43
State of Alabama v. United States, 56 Fed. Supp. 478 ..... 2, 18, 21, 23, 26, 30, 31
State of New York v. United States, 257 U. S. 591 35
United States v. Abilene & S. R. Co., 265 U. S. 269 20
United States v. American Sheet & Tin Plate Co., 301 U. S. 402 2
United States v. Louisiana, 290 U. S. 70 35
United States v. Pan American Petroleum Corporation, 304 U. S. 156 2

STATUTES CITED

Emergency Price Control Act of 1942, U. S. C., Title 50,
Section 901 45
Inflation Control Act of 1942, U. S. C., Title 50,
Section 961 ..... 3, 7, 45, 48
Interstate Commerce Act, U. S. C., Title 49,
Section 13 (3) 3, 26, 47
Section 13 (4) 3, 14, 47
Section 15a 3, 48

Supreme Court of the United States

OCTOBER TERM, 1944

No. 574

THE STATE OF ALABAMA AND PUBLIC SERVICE COMMISSION, THE STATE OF TENNESSEE AND THE RAILROAD AND PUBLIC UTILITIES COMMISSION OF THE STATE OF TENNESSEE, COMMONWEALTH OF KENTUCKY AND RAILROAD COMMISSION OF KENTUCKY ..... *Appellants.*

vs.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION AND FRED M. VINSON, ECONOMIC STABILIZATION DIRECTOR, BY CHESTER BOWLES, PRICE ADMINISTRATOR, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF KENTUCKY.

BRIEF FOR APPELLANTS, COMMONWEALTH OF KENTUCKY AND RAILROAD COMMISSION OF KENTUCKY.

I.

OPINION OF THE COURT BELOW.

The opinion of the United States District Court for the Western District of Kentucky, entitled *State of Ala-*

bama v. *United States*, which is here under review, is reported in 56 Fed. Supp. 478. (R. 1345-1362.)

The opinion of the Interstate Commerce Commission, entitled *Alabama Intrastate Fares* (and related cases), which was under review in the lower Court, is reported in 258 I. C. C. 133. (R. 4-47.)

II.

JURISDICTION.

The jurisdiction of this Court is specifically invoked under U. S. C. Title 28, Section 47a (Judicial Code, Section 210). Other statutes pertinent to the jurisdiction of this Court are U. S. C. Title 28, Sections 47, 41 (28), 44 and 345 (Judicial Code, Section 238).

The three cases in the Court below were consolidated for trial and tried as one action and disposed of by a single written opinion and by a single judgment. A single appeal of the three cases from that judgment of the Court is prosecuted under Rule 74 of the Rules of Civil Procedure for the District Courts of the United States, and in conformity with the opinions of this Court in the cases of *First National Bank* v. *Louisiana Tax Commission*, 289 U. S. 60, 62; *United States* v. *American Sheet & Tin Plate Co.*, 301 U. S. 402, 405, 406; and *United States* v. *Pan American Petroleum Corporation*, 304 U. S. 156, 157.

The decree of the District Court for the Western District of Kentucky was entered August 3, 1944. (R. 1362-1363.) An appeal to this Court was allowed September 1, 1944. (R. 1373-1374.) The original record of the Court below was filed in this Court September 25, 1944, under an order of the District Court dated September 1, 1944. (R. 1375.) The case was docketed October 9, 1944, and probable jurisdiction was noted by this Court on November 13, 1944. (R. 1393-1394.)

III.

QUESTION PRESENTED.

The question presented by these appellants is whether the order of the Interstate Commerce Commission, which authorized and required certain railroads operating within Kentucky to make substantial increases, generally 33 1/3 per cent, in their Kentucky intrastate passenger coach fares, effective August 15, 1944, constitutes an unwarranted and unjustified invasion of the sovereignty of the Commonwealth of Kentucky in that it exceeds the powers granted to the Federal Congress by the Commerce Clause of Section 8 of Article I of the Constitution of the United States, and whether said order contravenes the Fifth and Tenth Amendments of said Constitution.

IV.

STATUTES INVOLVED.

A proper interpretation of the statutes listed below is important to the determination of the question presented herein:

Section 13 (3) of the Interstate Commerce Act; U. S. C. Title 49, Section 13 (3).

Section 13 (4) of the Interstate Commerce Act; U. S. C. Title 49, Section 13 (4).

Section 15a of the Interstate Commerce Act; U. S. C. Title 49, Section 15a.

Section 1 of the Inflation Control Act of 1942; U. S. C. Supp. III, Title 50, Section 961.

These statutes are printed in full in the Appendix of this brief.

V.

STATEMENT OF THE CASE.

1—History of Southern Passenger Fares

During World War I and the period following immediately thereafter the railroads of the United States were in dire need of increased revenues in order to operate and maintain their properties efficiently. To provide these additional revenues the Director General of Railroads and the Interstate Commerce Commission authorized substantial increases in their rates, fares and charges. As a result of these authorizations the basic passenger fare reached its peak of 3.6 cents per passenger mile on August 26, 1920. *Increased Rates, 1920.* 58 I. C. C. 220, *et seq.*

That high fare; together with the advent of private and common carrier motor transportation, caused a drastic decline in railroad passenger traffic, beginning about 1926. To meet this situation many railroads, particularly in the south and west, experimented with lower fares over various sections of their lines and for varying periods of time. These experiments culminated in the establishment of a basic coach fare of 1.5 cents per passenger mile, both interstate and intrastate, effective December 1, 1933, on most of the railroads operating in Southern Passenger Association Territory. Somewhat higher fares, however, were charged by these railroads for travel in pullman and parlor cars. At the same time other railroads in other sections of the country were charging fares which varied greatly and ranged upward to the peak first established in 1920. (R. 1143-1144.)

The chaotic condition then existing with respect to passenger fares caused the Interstate Commerce Commission in 1935 to institute its first general investigation of these matters under its Docket 26550. In its report in that docket, *Passenger Fares and Surcharges*, 214 I. C. C. 174, decided February 28, 1936, the Commission found that the interstate fares then being charged were, and for the future

would be, unreasonable to the extent that they exceeded 2 cents per passenger mile in coaches, and 3 cents per passenger mile in pullman and parlor cars. The Commission further found at page 257 of that report that the interstate coach fares then being charged by most southern railroads, including some operating in Kentucky, of 1.5 cents per passenger mile, were not unreasonable, or otherwise unlawful. (R. 1148.)

Pursuant to the latter finding, the southern railroads continued to charge 1.5 cents per passenger mile up to and including February 9, 1942, except for a period of fourteen months from November 15, 1937 to January 14, 1939, inclusive, during which the maximum fare of 2 cents, prescribed in *Passenger Fares and Surcharges, supra*, was maintained. (R. 1148.)

Immediately following the entrance of the United States into World War II in December, 1941, the Class I railroads petitioned the Interstate Commerce Commission for authority to make general increases in their rates, fares and charges. The increases were said to be necessary to take care of general wage increases granted in the Fall of 1941, and also increases in costs of materials and supplies, which had already occurred, and which were expected as a result of our being engaged in war activities. In response to these petitions the Commission promptly instituted an investigation under its Docket *Ex Parte 148, Increased Railroad Rates, Fares and Charges, 1942*, 248 I. C. C. 545, decided March 2, 1942. By an order issued during the course of the investigation the Commission approved that portion of the carriers' request which sought increases of 10 per cent in the *existing* interstate passenger fares and charges, and said increases became effective February 10, 1942. By a corresponding order the Railroad Commission of Kentucky granted like increases on Kentucky intrastate traffic and said increases also became effective February 10, 1942. As a result of these authorizations by the Federal

and State regulatory bodies the basic coach fares on most Kentucky railroads became 1.65 cents per passenger mile on February 10, 1942, instead of 1.5 cents theretofore applicable.

The increases in passenger fares thus sought and obtained by the Class I carriers of the nation were estimated by them to provide additional revenues to the extent of $45,000,000 based on the traffic volume of 1941. (248 I. C. C. 545,608.)

Notwithstanding they were accorded the full measure of increases sought in their interstate and intrastate passenger fares, that both their freight and passenger traffic had shown a tremendous increase in volume by reason of World War II, and, because of the price control program instituted early in 1942 by the Federal Government, increases in costs of their materials and supplies had not occurred to the extent anticipated, the southern railroads on July 14, 1942, petitioned the Interstate Commerce Commission for a further increase in their interstate coach fares from 1.65 cents to 2.2 cents per passenger mile, equivalent to 33 1/3 per cent. This petition was in the form of a request that the proceeding known as *Passenger Fares and Surcharges, supra*, be reopened, and the findings and orders therein modified to permit the filing of tariffs, which would provide for the increases sought. Copies of the petition were served on the parties to that proceeding. No hearing was held and the petition was denied by an order dated August 1, 1942. Coincident with that action, however, the Commission reopened *Ex Parte 148, Increased Railway Rates, Fares and Charges, 1942*, and, by a *pro forma* order, without any hearing whatsoever, granted the southern railroads permission to publish tariffs which would increase their interstate passenger coach fares from 1.65 to 2.2 cents per passenger mile. Said tariffs were published and were permitted to become effective October 1, 1942, even though the Commission was petitioned by the Office of Price Administration to suspend the in-

creases contained therein pending an investigation and hearing as to their lawfulness. (R. 1145-1146.)

It is important to observe that the order of the Interstate Commerce Commission of August 1, 1942, permitting the tariffs carrying increased fares to be filed, was issued under *Ex Parte 148*, without notice to the parties to that proceeding, and notwithstanding the fact that the petitions of the carriers in that proceeding did not seek any increases in their passenger fares, other than the general increase of 10 per cent in the fares *existing* at the time the petitions were filed, which increases had previously been approved and made effective February 10, 1942. These appellants were not parties either to *Ex Parte 148*, or to *Passenger Fares and Surcharges, supra*, and therefore were not accorded an opportunity to protest against the issuance of the Commission's order of August 1, 1942.

It should also be noted that the increases in the interstate southern coach fares became effective October 1, 1942, or one day prior to the enactment on October 2, 1942 of the Inflation Control Act of 1942, U. S. C. Supp. III, Title 50, Section 961, which provides, *inter alia*, for the stabilization of prices, wages and salaries affecting the cost of living, and for certain procedures to be observed in connection with general increases in the rates and charges of common carriers.

2—History of the Proceedings

In so far as the Kentucky fares are involved, this proceeding had its genesis in the filing of tariff schedules with the Railroad Commission of Kentucky providing for increases in the Kentucky intrastate passenger coach fares to become effective December 1, 1942. Under these schedules the basic one-way fares, which had been 1.5 cents per passenger mile prior to February 10, 1942, and 1.65 cents thereafter, were to be increased to 2.2 cents per passenger mile. Such increases amounted generally to 33 1/3 per cent, or more than $500,000 per annum.

Upon protests from various interested parties, including the Office of Price Administration, the Kentucky Commission suspended the operation of the schedules pending a hearing and investigation as to their lawfulness. Said hearing was held by the Kentucky Commission at its offices in Frankfort, May 14, 1943, and in its report, dated May 31, 1943, that Commission found that the suspended schedules had not been shown to be just and reasonable. The Commission thereupon entered an order directing their cancellation. (R. 1062-1063.)

Shortly thereafter the Interstate Commerce Commission, in response to a petition of the Kentucky railroads, dated June 24, 1943, instituted an investigation under Docket 29000, *Kentucky Intrastate Fares*, to determine whether the refusal of the Kentucky Commission to authorize or permit increases in the Kentucky intrastate passenger coach fares caused any undue or unreasonable advantage, preference or prejudice as between persons or localities in intrastate commerce, on the one hand, and interstate or foreign commerce, on the other, or any undue, unreasonable, or unjust discrimination against interstate or foreign commerce. (R. 1141.)

Hearings were held in Docket 29000, *Kentucky Intrastate Fares*, before Examiner C. E. Stiles of the Interstate Commerce Commission at Frankfort, Ky., on September 8 and 9, 1943, at which evidence was taken and a transcript of the testimony and record was made. (R. 1140.)

In due course, that is, on or about December 15, 1943, Examiner Stiles issued his proposed report wherein he recommended that the Commission find that the Kentucky intrastate fares then in effect did not cause any undue or unreasonable advantage, preference or prejudice as between persons or localities in interstate commerce, on the one hand, and interstate or foreign commerce, on the other hand, or any undue, unreasonable, or unjust discrimination against interstate or foreign commerce. The Examiner

also recommended the entry of an order discontinuing the proceeding. (R. 1077-1094.) Exceptions to the examiner's report were filed by the Kentucky railroads and reply was made by counsel for the Kentucky state authorities and other interveners.

Docket 29000, *Kentucky Intrastate Fares*, was assigned for oral argument before the Interstate Commerce Commission at Washington, February 18, 1944, at which time the Commission also heard arguments in three similar but separate proceedings involving the intrastate passenger fares in Alabama, Tennessee and North Carolina. The four cases were disposed of by a single report, dated March 25, 1944, and entitled *Alabama Intrastate Fares* (and related cases), 258 I. C. C. 135. In that report the Commission, with Commissioners Aitchison, Mahaffie and Splawn dissenting, set aside the findings of the Examiner and, in lieu thereof, found that the Kentucky intrastate passenger coach fares caused, and in the future would cause, undue and unreasonable advantage to, and preference of, persons in intrastate commerce, undue and unreasonable disadvantage to, and prejudice against, persons in interstate commerce, and undue, unreasonable, and unjust discrimination against interstate commerce. The Commission found further that such unlawfulness should be removed by increasing the Kentucky intrastate fares to the level of the corresponding interstate fares contemporaneously maintained by the Kentucky railroads to, from, and through Kentucky. (R. 38.) A corrected order, dated May 8, 1944, was issued, authorizing and requiring increases in the Kentucky fares effective July 1, 1944. (R. 1-3.) Subsequently, the effective date of the order was postponed to August 15, 1944. The Interstate Commerce Commission made no finding with respect to undue prejudice against interstate localities.

On June 12, 1944, these appellants filed their petition in the District Court of the United States for the Western

District of Kentucky, bearing Civil Action 708, wherein they sought temporary and permanent injunctions restraining the enforcement, operation and execution of said corrected order of the Interstate Commerce Commission, dated May 8, 1944, and asked that said order be set aside and annulled.

Pursuant to U. S. C. Title 28, Section 47, a Three-Judge District Court, composed of Honorable Elwood Hamilton, Circuit Judge, and Honorable Shackelford Miller, and Honorable Mac Swinford, District Judges, was convened and a hearing before said District Court was held at Louisville, Ky., July 17 and 18, 1944. At the same time and place the said District Court also held hearings in Civil Action 706, *The State of Alabama and Public Service Commission* v. *United States of America and Interstate Commerce Commission*, and Civil Action 707, *The State of Tennessee and the Railroad and Public Utilities Commission of the State of Tennessee* v. *United States of America and Interstate Commerce Commission*, involving similar issues with respect to the intrastate passenger fares in Alabama and Tennessee, respectively. (R. 544-545.)

The District Court in an opinion by Judge Miller, dated August 3, 1944, and reported in 56 Fed. Supp. 478, sustained generally the findings and order of the Interstate Commerce Commission. At page 487 of its opinion the Court referred to that portion of the Commission's findings wherein it was held that the intrastate fares caused undue and unreasonable disadvantage and prejudice of interstate passengers, and said that such finding may or may not be sufficiently supported by the evidence but that in view of its approval of the Commission's finding that the intrastate fares caused undue, unreasonable and unjust discrimination against interstate commerce, it was unnecessary to decide that point. (R. 1358.)

The present proceeding is an appeal from the final decree of the District Court made and entered August 3, 1944, in Civil Actions 706, 707 and 708.

VI.

SPECIFICATION OF ASSIGNED ERRORS INTENDED TO BE URGED

Appellants, Commonwealth of Kentucky and Railroad Commission of Kentucky, contend:

First, That the findings of the Interstate Commerce Commission in Docket 29000, *Kentucky Intrastate Fares,* are not supported by substantial or any evidence,

Second, That the corrected order of May 8, 1944 based upon said findings of the Interstate Commerce Commission is in contravention of the Fifth and Tenth Amendments of the Federal Constitution and void, and

Third, That the District Court erred in concluding that said findings and order of the Interstate Commerce Commission were supported by substantial evidence, did not involve errors of law, and were not arbitrary or unreasonable.

In particular, appellants contend that the Interstate Commerce Commission, and the Court below, erred in holding there was substantial evidence of record to sustain:

(a) The Commission's Finding No. 1, that the interstate coach fares to, from and through points in Kentucky were just and reasonable,

(b) The Commission's Finding No. 4, that the payment of higher fares by interstate passengers than intrastate passengers traveling in the same trains and generally in the same cars, constituted undue preference of intrastate passengers and undue prejudice of interstate passengers,

(c) The Commission's Finding No. 5, that traffic moving under the lower Kentucky intrastate fares was not contributing its fair share of the revenues required to

enable respondents to render adequate and efficient transportation service, and

(d) The Commission's Finding No. 6, that the maintenance of intrastate passenger coach fares in Kentucky on a lower level than the corresponding interstate fares caused undue preference of persons in intrastate commerce, undue prejudice against persons in interstate commerce, and undue and unreasonable discrimination against interstate commerce.

VII.

SUMMARY OF ARGUMENT

The findings and orders of the Interstate Commerce Commission in its Docket *Ex Parte 148, Increased Railway Rates, Fares and Charges, 1942*, 248 I. C. C. 545, *et seq.*, and the evidence in that proceeding, did not constitute evidence of the reasonableness of the interstate coach fares embraced in its Docket 29900, *Kentucky Intrastate Fares*.

2. The presentation of the history of the interstate and intrastate fares did not constitute evidence of the reasonableness of the interstate fares.

3. The statistical data, and testimony relating to increased operating cost, were unsubstantial, and wholly inadequate to sustain the finding that the Kentucky interstate fares were just and reasonable.

4. The Interstate Commerce Commission was without power to consider the testimony and exhibits of witnesses for the Kentucky railroads as evidence of undue preference of intrastate passengers and undue prejudice against interstate passengers.

5. The payment of higher fares per passenger mile by interstate passengers than by intrastate passengers did not constitute evidence of undue prejudice against the former and undue preference of the latter.

6. The saving clause of the order of the Interstate Commerce Commission is insufficient to support its statewide finding of undue preference of intrastate passengers and undue prejudice against interstate passengers.

7. The findings of the Interstate Commerce Commission of undue preference of intrastate passengers and undue prejudice against interstate passengers are not supported by the opinion of the District Court.

8. A mere showing that an increase in the intrastate fares would cause an increase in the revenue of the carriers is insufficient to sustain a finding of undue discrimination against interstate commerce.

9. A showing that passengers may defeat through interstate fares by combinations of intrastate fares to the border points and interstate fares beyond, without any evidence that such acts have been practiced, does not constitute evidence of undue discriminaton against interstate commerce.

10. The maintenance of lower fares per passenger mile on intrastate traffic than on interstate traffic, even though the two classes of traffic are intermingled, is not evidence that the intrastate traffic fails to pay its fair proportionate share of the cost of maintainng an adequate railway system.

11. A showing of losses on passenger traffic in past years does not constitute evidence of undue discrimination against interstate commerce.

12. The Interstate Commerce Commission and the District Court failed to accord any weight to the stabilization program of the Federal Government.

VIII.

ARGUMENT

A—Preliminary Statement

By Clause (3) of Section 8 of Article I of the Constitution of the United States, commonly called the Commerce Clause, the Federal Congress was given the power: "To regulate commerce with foreign nations and among the several States, and with the Indian tribes." No similar power was delegated to the Federal Government by this, or any other provision of the Federal Constituton, to regulate the internal commerce of the several States, and such power was accordingly reserved to the States by the Tenth Amendment to the Federal Constitution. When the Interstate Commerce Act was originally enacted in 1887, the powers delegated therein to the Interstate Commerce Commission were restricted by Section 1 to interstate and foreign commerce. U. S. C. Title 49, Section 1 (1).

Notwithstanding these provisons of the Federal Constitution and the Interstate Commerce Act, it had been held prior to 1920 that the Interstate Comerce Commission could require increases in intrastate rates, fares, and charges in order to remove unjust discrimination against interstate *persons* or *localities*. *The Shreveport Case, Houston, East and West Texas Railway Co.* v. *United States*, 234 U. S. 342, 58 L. Ed. 1341. The principle enunciated in the *Shreveport Case* respecting the removal of discrimination against interstate persons and localities, through the medium of increases in intrastate rates, fares, and charges, was incorporated in the Transportation Act of 1920, and at the same time the Interstate Commerce Commission was given power to increase intrastate rates, fares, and charges to the extent necessary to r[illegible]e "any undue, unreasonable, or unjust discrimination against interstate or foreign commerce." Section 13 (4) of the Interstate Commerce Act, U. S. C. Title 49, Section 13 (4).

These assumptions of power by the Federal Congress and its agency, the Interstate Commerce Commission, to regulate intrastate commerce, were said to be a necessary part of their power to regulate interstate and foreign commerce.

Since its enactment in 1920, Section 13 (4) of the Interstate Commerce Act has been the subject of numerous decisions of this Court, and as a result thereof, it has been consistently held, as stated at page 484 of the opinion of the Court below, that:

> "* * * the power of the Commission to fix intrastate rates is limited to the two situations of (1) where the evidence shows a preference as between persons or localities in intrastate commerce on the one hand and interstate commerce on the other hand, and (2) where the evidence shows any unreasonable or unjust discrimination against interstate commerce. Any attempt on the part of the Intersfate Commerce Commission to regulate intrastate rates where one of these two situations does not exist would be in conflict with the Tenth Amendment to the United States Constitution." (R. 1353).

This Court has also held that a finding that the interstate rates, fares, and charges are just and reasonable, is a prerequisite to a finding by the Commission of unjust discrimination against interstate commerce. This, too, was recognized by the Court below at page 485 of its opinion, wherein it said:

> "Unless that fact [reasonableness of the interstate fares] is first established there is no basis for a finding of discrimination against interstate commerce. Georgia Public Service Commission v. United States, 283 U. S. 765; United States v. Louisiana, 290 U. S. 70." (R. 1355)

In the first *Florida Log Case*, *Florida* v. *United States*, 282 U. S. 194, this Court laid down certain principles which plainly show the limitations of the Interstate Commerce Commission in its regulation of intrastate rates, fares, and charges. For example, at page 211, the Court had the following to say about the relationship of Section 13 (4) to Section 15a of the Interstate Commerce Act:

> "In construing the statute this court has held that the general provision of Sec. 13 (4) prohibiting 'unjust discrimination against interstate commerce' and authorizing the Commission to establish intrastate rates to prevent such discrimination, is to be read in connection with Sec. 15a, both of which were added by the Transportation Act, 1920. [Citations omitted] There is what this court called a 'dovetail relation' between the two provisions. The authority granted by Sec. 13 (4) is thus to be considered in the light of the affirmative duty of the Commission to fix rates and to take other important steps to maintain an adequate national railway system."

And at pages 211 and 212 the Court made the following comment upon the propriety of showing a need for the exercise of federal power:

> "The propriety of the exercise of the authority must be tested by the relation to the purpose of the grant and with suitable regard to the principle that whenever the federal power is exerted within what would otherwise be the domain of the state power, the justification of the exercise of the federal power must clearly appear."

With respect to disparities between interstate and intrastate rates, the Court at page 212 said:

> "The Commission has no general authority to regulate intrastate rates and the mere existence of a disparity between particular rates on intrastate and interstate traffic does not warrant the Commission in prescribing intrastate rates."

As to the requirement of essential findings based upon adequate evidence the Court at page 215 said:

> "In the absence of such findings we are not called upon to examine the evidence in order to resolve opposing contentions as to what it shows or to spell out and state such conclusions of fact as it may permit. The Commission is the fact-finding body and the Court examines the evidence not to make findings for the Commission but to ascertain whether its findings are properly supported."

The above excerpts are designed to illustrate the numerous limitations which have been recognized by this Court upon the power of the Federal Government to regulate intrastate commerce, and the extreme care which should be exercised by the Interstate Commerce Commission when it undertakes to invade the reserved powers of the States.

We come now to a consideration of the evidence before the Interstate Commerce Commission, and the Court below, to determine whether the requirements of these limitations have been met, or whether the assailed order of the Commission has been issued in derogation thereof, and therefore in contravention of the Fifth and Tenth Amendments of the Federal Constitution.

B—Reasonableness of Interstate Fares

POINT 1

DECISIONS OF INTERSTATE COMMERCE COMMISSION IN EX PARTE 148 ARE WITHOUT PROBATIVE VALUE

In justification of its finding that the interstate passenger coach fares to, from, and through Kentucky were just and reasonable, the Interstate Commerce Commission referred to its findings and orders in *Ex Parte 148, Increased Railway Rates, Fares and Charges, 1942, supra.* The Court below likewise referred to the findings and orders in *Ex Parte 148* in concluding that the Commission's finding of reasonableness of the interstate fares was supported by substantial evidence. 56 Fed. Supp. 485, 486. (R. 1355-1356)

Ex Parte 148 was instituted by the Commission upon petition of the Class I railroads of the nation for the sole purpose of determining whether the carriers were in need of additional revenues to take care of additional expenses, due to wage increases, and increases in cost of materials and supplies incident to World War II. The proceeding was strictly a "revenue case" and *the reasonableness of individual rates, fares, and charges was not considered.* This is shown by the following excerpt from page 613 of the opinion:

> "Rates and charges increased as herein permitted are not prescribed rates and charges within the meaning of Arizona Grocery Co. v. Atchison, T. & S. F. Ry. Co., 284 U. S. 370."

By their petitions in *Ex Parte 148* the railroads asked for an increase of 10 per cent in their then existing interstate passengers fares and charges. This portion of their petitions was granted in full during the course of the investigation by an order of the Interstate Commerce Com-

mission, dated January 21, 1942, and was subsequently affirmed at page 609 of the Commission's opinion of March 2, 1942. A like increase of 10 per cent in the Kentucky intrastate fares was approved by an appropriate order of the Railroad Commission of Kentucky. Under these orders, both the interstate and intrastate passenger coach fares to, from, and within Kentucky, on most southern railroads were increased from 1.5 to 1.65 per passenger mile on February 10, 1942.

By a supplemental order in *Ex Parte 148*, dated August 1, 1942, the Interstate Commerce Commission authorized the southern railroads to file tariffs providing for increases in their interstate passenger coach fares from 1.65 to 2.2 cents, effective October 1, 1942, and it subsequently declined to suspend these increases pending a hearing and investigation as to their lawfulness, even though requested to do so by the Office of Price Administration. The order of the Commission authorizing the filing of tariffs carrying the increased interstate passenger coach fares was issued *without the holding of a hearing thereon, and without any evidence respecting the reasonableness of said increased fares having been presented* at any of the hearings in *Ex Parte 148*. As a matter of fact, the original petitions of the railroads in *Ex Parte 148* only sought increases of 10 per cent in the existing fares, that is, an increase in these particular fares from 1.5 to 1.65 cents per passenger mile. Furthermore, the order of August 1, 1942 was not founded upon a petition of the railroads in Ex Parte 148, but presumably upon a petition filed by them in a separate proceeding, namely, *Passenger Fares and Surcharges, supra.*

From the above it is clear that prior to the submission of Docket 29000, *Kentucky Intrastate Fares*, on February 18, 1944, the Interstate Commerce Commission had not ap-

proved, or considered, in any formal proceeding, the reasonableness of the increases in southern interstate passenger coach fares from 1.65 to 2.2 cents. On the contrary, in the proceeding known as *Passenger Fares and Surcharges, supra*, that Commission at page 257 had specifically found that the fares then being maintained on this traffic, namely 1.5 cents per passenger mile, were not unreasonable or otherwise unlawful. The only modification of this finding prior to the submission of Docket 29000, *Kentucky Intrastate Fares*, was the increase from 1.5 to 1.65 cents per passenger mile approved by the Commission in *Ex Parte 148*.

It thus follows that the reasonableness of the interstate passenger coach fares to, from, and through Kentucky can not be sustained by the Commission's findings and orders in *Ex Parte 148*.

A still further infirmity of the reliance on *Ex Parte 148* to sustain the reasonableness of the interstate passenger coach fares to, from, and through Kentucky, is the fact that none of the evidence introduced at the hearings in *Ex Parte 148* was incorporated in the record in Docket 29000, *Kentucky Intrastate Fares*, as provided by Rule 82 of the General Rules of Practice of the Interstate Commerce Commission. It is well established that nothing can be treated as evidence which is not introduced as such. *Interstate Commerce Commission* v. *Louisville & N. R. Co.*, 227 U. S. 88, 91, 93; *United States* v. *Abilene & S. R. Co.*, 265 U. S. 269, 288.

To complete the record it should be mentioned that neither of these appellants, Commonwealth of Kentucky and Railroad Commission of Kentucky, was a party to either *Passenger Fares and Surcharges, supra*, or *Ex Parte 148*.

POINT 2

STATEMENT OF HISTORY OF INTERSTATE FARES DOES NOT ESTABLISH THEIR REASONABLENESS

In further support of its conclusion that the Commission's finding of reasonableness of the interstate fares was supported by substantial evidence, the Court below said at page 485 of its opinion: "The Commission had before it evidence showing the history of both interstate and intrastate fares * * *." (R. 1355)

A statement of the history of any rate or fare is always desirable and helpful to a proper understanding of the issues involved, but the mere presentation of such history in nowise establishes whether the rate or fare is reasonable or unreasonable. For example, in the present case, the history showed that the basic southern interstate passenger coach fares had ranged from 1.5 cents to 3.6 cents during the period beginning prior to World War I and extending to the date of the hearings in Docket 29000, *Kentucky Intrastate Fares.* In *Passenger Fares and Surcharges, supra,* decided in 1936, when passenger traffic and operating ratios were much less favorable to the railroads than at the time of the hearing in *Kentucky Intrastate Fares* in September 1943, the Interstate Commerce Commission found that the interstate passenger coach fares of the nation should not exceed 2 cents per passenger mile. It also found in that proceeding that the fare of 1.5 cents then being charged by the southern railroads was not unreasonable or otherwise unlawful.

The history further showed that prior to October 1, 1942 the southern railroads voluntarily maintained on both

interstate and intrastate traffic the following fares in coaches:

Period	*Fare per Mile*
December 1, 1933 to November 14, 1937	1.5 cents
November 15, 1937 to January 14, 1939	2.0 cents
January 15, 1939 to February 9, 1942	1.5 cents
February 10, 1942 to September 30, 1942	1.65 cents

The Interstate Commerce Commission and the Courts have frequently held that the long maintenance of a given rate is *prima facie* evidence of its reasonableness. *Export and Domestic Rates*, 8 I. C. C. 214; *Rates on Bananas from Gulf Ports*, 30 I. C. C. 510; *Louisville & N. R. Co.* v. *Kentucky Railroad Commission*, 214 Fed. 465, affirmed, *Louisville & N. R. Co.* v. *Finn*, 235 U. S. 601.

Appellants submit that if any weight whatsoever is to be accorded the history of the interstate and intrastate fares, such evidence fully sustains the finding and order of the Railroad Commission of Kentucky, dated May 31, 1943, wherein it was held that the rate of 1.65 cents then being maintained on Kentucky intrastate traffic was not unreasonable or otherwise unlawful, and that the fare of 2.2 cents then proposed by the railroads had not been shown to be just and reasonable. In any event, they submit that the mere presentation of the history of the interstate and intrastate fares does not establish the reasonableness of the interstate fare of 2.2 cents under the conditions prevailing in September 1943.

POINT 3

STATISTICAL DATA AND EVIDENCE OF INCREASED OPERATING COSTS WERE INADEQUATE TO SUSTAIN REASONABLENESS OF INTERSTATE FARES

The only remaining evidence of record mentioned by the Court below as tending to support the Commission's finding of reasonableness of the interstate fares is to be found at page 485 of its opinion, wherein it was stated that the Commission had before it "statistical data with respect to the principal railroads operating in Alabama, Tennessee and Kentucky", and at page 486 wherein it was stated that the investigations and conclusions in *Ex Parte 148* "were supplemented with current statistical data and evidence of increased operating costs largely attributable to war-time conditions." The latter statement was qualified by the following sentence: "It is true that the same war-time conditions have greatly increased the revenues of the carriers, but it has been with resulting unusual wear and tear on equipment." (R. 1357)

An increase in passenger traffic over that prevailing prior to World War II has long been the dream of railroad officials. Even a moderate increase, they contended, would take them out of the "red" and place passenger traffic on a paying basis. This situation is exemplified by the following excerpt from page 182 of *Passenger Fares and Surcharges, supra*,:

> "The heavy inroads upon the passenger business of railways resulting, among other things, from the competition of automobiles and motor busses have affected unfavorably the unit costs of the traffic remaining on the rails, and *if the volume of rail passenger traffic can be increased* the unit cost will decline when computed in the manner in which the 1933 cost was computed. Thus, an increase of only 0.79 passenger in the aver-

age car occupancy for 1933 of 11.2 in the eastern district would have been sufficient, the average passenger-mile revenue and average journey remaining the same, to eliminate the entire passenger deficit of $11,500,400 for 1933 in that district." (Emphasis supplied)

Having obtained increases in their rail passenger traffic which border on the sensational, the railroads at the hearing in *Kentucky Intrastate Fares* lamented that such increases resulted in increases in their operating costs and in wear and tear on their equipment. Some increases in costs and some wear and tear were inevitable, but in the absence of a showing that these costs were out of proportion to the increased revenues flowing from the increased volume of traffic, no significance whatsoever should be attached to them. Such showing was not made, and obviously could not be made, by the railroads.

The statistical data presented at the hearing showed, for example, that the five principal railroads of Kentucky enjoyed the following increases in their interstate and intrastate Kentucky operations for the years shown. (R. 1076)

	1937	*1938*	*1942*
Passenger revenues	$5,086,532	$4,318,238	$14,023,436
Passenger miles (thousands)	279,255	208,349	723,909
Average passengers per car-mile	11.5	9.1	22.3

From the above it will be observed that these Kentucky railroads were handling about three times as much passenger traffic in Kentucky in 1942 as in 1937 and that during this period the number of passengers per car, including parlor cars and pullmans, had just about doubled. That this increase in traffic was not attended by corresponding increases in costs, is demonstrated by the decrease in passenger operating ratios for the seven railroads upon whose petition *Kentucky Intrastate Fares, supra*, was in-

stituted. (R. 1289). As stated by witness Tassin (R. 1208), the operating ratio is obtained by dividing the operating revenue into the operating expenses.

The less favorable showing for 1938 than for 1937 was caused by the increase in the basic coach fares from 1.5 to 2.0 cents per passenger mile on November 15, 1937. Because of this less favorable showing the 1.5-cent fare was restored January 15, 1939.

Notwithstanding the tremendous increases in traffic and revenues recorded by the Kentucky railroads in 1942 over 1397, still further increases occurred in the first half of 1943, the latest period for which statistics were available at the time of the hearing in September 1943. The following are illustrative: (R. 1311, 1312, 1314, 1317, 1316)

Total Operations of 7 Kentucky Railroads	*First six months*	
	1942	*1943*
Freight revenues	$328,971,432	$393,358,095
Passenger revenues	$ 37,617,828	$ 83,550,668
Total operating revenues	$365,967,329	$502,695,431
*Net railway operating income	$ 66,457,303	$ 78,241,371
Operating ratio	64.5	56.9

* After payment of federal income and excess profits taxes.

In the light of such showing these appellants submit that the Court below erred in concluding that the Interstate Commerce Commission's finding of reasonableness of the interstate fares was sustained by the statistical data before it, or by the increase in the operating costs of the railroads.

C—Undue Discrimination Against Interstate Passengers

POINT 1

INTERSTATE COMMERCE COMMISSION WAS WITHOUT POWER TO CONSIDER TESTIMONY OF RAILROAD WITNESSES AS EVIDENCE OF DISCRIMINATION AGAINST INTERSTATE PASSENGERS.

The six specific findings of the Interstate Commerce Commission are set forth at page 482 of the opinion of the Court below. (R. 1349, 1350.) The finding of undue preference of intrastate passengers and undue prejudice of interstate passengers appears in a somewhat indirect form in Finding 4, and is repeated in a more direct form in Finding 6.

Before analyzing the testimony presented to the Commission in support of this finding appellants desire to emphasize that it came entirely from employee witnesses of the railroads. Appellants submit that such testimony was not competent and that the Commission was without power to consider same as evidence of discrimination against interstate passengers.

By Section 13 (2) of the Interstate Commerce Act, U. S. C. Title 49, Section 13 (2) the Interstate Commerce Commission is empowered to institute an inquiry, "on its own motion", concerning any matter or thing of which complaint may be made. Docket 29000, *Kentucky Intrastate Fares*, was not such a proceeding but was an investigation instituted upon a petition of the carriers, dated June 24, 1943, as provided by Section 13 (3) of the Interstate Commerce Act, U. S. C. Title 49, Section 13 (3). Mention is made of this fact to show that the Commission did not have before it any complaint of any interstate passenger of any discrimination being practiced against him. (R. 1141.)

These appellants do not go so far as to say that if, after the proceeding had been instituted, an interstate passenger

had intervened and submitted evidence of discrimination caused by the lower intrastate fares, that such evidence would not have been competent. But they do say that in the absence of any complaint, intervention, or evidence by or on behalf of any interstate passenger, the Commission was without power to treat as evidence of discrimination against interstate passengers, any testimony of witnesses for the railroads, all of whom were their own employees.

The impropriety of treating such testimony as evidence of discrimination against interstate passengers has heretofore been recognized by the Commission in *Passenger Fares and Charges in Georgia*, 214 I. C. C. 567, wherein at pages 570 and 571, it said:

> "*Persons and localities*—No person or locality here complains that the Georgia intrastate fares cause undue preference or prejudice.
>
> * * * * * * *
>
> Evidence to sustain a finding that intrastate rates or fares are violative of Section 13, in that they unduly prejudice persons and places, must be of equal dignity and probative value as the evidence necessary to sustain a finding under Section 3. Barrett Co. v. Atchison, T. & S. F. Ry. Co., 172 I. C. C. 319, 333. The evidence here presented does not meet this requirement."

POINT 2

PAYMENT OF HIGHER FARES PER MILE BY INTERSTATE PASSENGERS WAS NOT EVIDENCE OF UNDUE DISCRIMINATION AGAINST THEM:

At the hearing in *Kentucky Intrastate Fares*, *supra*, the railroad witnesses introduced various exhibits tending to show that the Kentucky intrastate coach fares were lower per passenger mile than the interstate fares to, from,

and through Kentucky. Such exhibits were wholly inadequate to support the findings of undue preference of intrastate passengers or undue prejudice of interstate passengers, even though the transportation conditions affecting the two types of service may have been substantially similar. This is demonstrated by the excerpt heretofore quoted from page 212 of *Florida* v. *United States*, 282 U. S. 194, namely: "* * * the mere existence of a disparity between particular rates on intrastate and interstate traffic does not warrant the Commission in prescribing intrastate rates."

This principle is particularly apposite in the case at bar because there was no evidence of discrimination against interstate passengers, and no interstate passenger complained of discrimination caused by the difference in fares. It was fully recognized by the Commission itself in *Passenger Fares and Charges in Georgia, supra*, wherein at pages 570 and 571, it said:

> "Respondents carry both interstate and intrastate passengers on the same trains, with the same service and accommodations. The intrastate passengers pay 2 cents per mile in pullman cars and ride on the same train and in the same cars with the interstate passengers who pay one-way fares of 3 cents, 6-month round-trip fares of 2.5 cents, and 15-day round-trip fares of 2 cents. In day coaches both interstate and intrastate travelers pay the same fares. This, respondents allege, constitutes undue prejudice to and preference of persons and undue discrimination against persons traveling in interstate commerce.
>
> * * * * * *
>
> We have no general authority to regulate intrastate rates or fares, and a mere disparity between those applicable interstate and intrastate does not warrant us in prescribing intrastate rates or fares. Florida v. United States, supra."

In the *Georgia Case* the intrastate fares of 2 cents per passenger mile in pullman cars were found not unlawful, that is, not unduly discriminatory against interstate persons, interstate localities, or interstate commerce. The Commission reached this conclusion notwithstanding the fact that the Georgia intrastate fares bore a lower ratio to the interstate fares, namely, 2 to 3, than do the Kentucky intrastate fares here under consideration, which ratio is 1.5 to 2.

POINT 3

SAVING CLAUSE OF COMMISSION'S ORDER IS INSUFFICIENT TO SUPPORT STATEWIDE FINDING OF DISCRIMINATION AGAINST INTERSTATE PASSENGERS.

In *Railroad Comm. of Wisconsin* v. *Chicago, B. & Q. R. Co.*, 257 U. S. 563, competent evidence was presented to show undue preference of intrastate passengers and undue prejudice against interstate passengers at certain border points. With respect to such evidence, this Court at page 580 said:

> "We cannot sustain the sweep of the order in this case on the showing of discrimination against persons or places alone."

As heretofore shown, no competent evidence was presented in *Kentucky Intrastate Fares, supra*, to support a finding of discrimination against interstate passengers even at the border points. Under the principle laid down in the *Wisconsin Case, supra*, it follows that the saving clause inserted in the Commission's order is insufficient to support its statewide finding of undue preference of intrastate passengers and undue prejudice against interstate passengers.

POINT 4

COMMISSION'S FINDINGS OF UNDUE DISCRIMINATION AGAINST INTERSTATE PASSENGERS ARE NOT SUSTAINED BY OPINION OF COURT BELOW

At page 487 of its opinion, (R. 1358, 1359) the Court below said:

> "That part of finding No. 4 which states that the payment by interstate passengers of a higher fare than is paid by the intrastate passengers is to the undue and unreasonable disadvantage and prejudice of the interstate passengers may or may not be sufficiently supported by the evidence to justify its finding, but in view of finding No. 6, hereinbelow referred to, it becomes unnecessary to decide that point.
>
> * * * * * * *
>
> "The existence of such discrimination against interstate commerce, regardless of the non-existence of any advantage as between persons or localities is sufficient justification for the Commission to end the disparity by ordering it removed."

It is clear from the above excerpts that the District Court refrained from passing upon the question of whether the finding by the Interstate Commerce Commission of undue discrimination against interstate commerce was supported by adequate evidence.

Premises considered, appellants submit that the Court below erred in its formal finding of Fact No. 6, which reads as follows:

> "6. The said findings of the Interstate Commerce Commission in Alabama Intrastate Fares No. 28963 [and related cases] are supported by substantial evidence." (R. 1343)

The findings of the Commission mentioned in the District Court's Finding No. 6, included the findings of undue discrimination against interstate passengers, with respect to which the Court in its opinion declined to say were supported by adequate evidence.

D—Undue Discrimination Against Interstate Commerce

POINT 1

MERE SHOWING THAT AN INCREASE IN INTRASTATE FARES TO LEVEL OF INTERSTATE FARES WOULD PRODUCE INCREASED REVENUES FOR CARRIERS DOES NOT CONSTITUTE EVIDENCE OF UNDUE DISCRIMINATION AGAINST INTERSTATE COMMERCE

In support of its conclusions that the Interstate Commerce Commission's finding of undue, unreasonable and unjust discrimination against interstate commerce, the Court below at page 487 of its opinion, (R. 1358) said in part as follows:

> "The evidence showed that the disparity in rates causes the railroads' revenues to be substantially less than they would be if the intrastate rates were increased to the interstate rate level, * * *."

These appellants admit that the Kentucky intrastate passenger coach fares were lower than the corresponding interstate fares to, from, and through Kentucky, and it may be that the raising of the intrastate fares to the level of the interstate fares would accord the railroads some additional revenues. They submit, however, that these findings alone do not constitute evidence that the intrastate fares discriminate against interstate commerce. Appellants make this contention with full knowledge of the statement of this Court in *Florida* v. *United States*, 282 U. S. 194, namely,

"The raising of rates does not necessarily increase revenue." This Court has repeatedly held that there is a "dovetail relationship" between that part of Section 13 (4) of the Interstate Commerce Act dealing with undue discrimination against interstate commerce and Section 15a of that Act. *Railroad Comm. of Wisconsin* v. *Chicago, B. & Q. R. Co., supra.* For this reason an increase in the state rates, unaccompanied by an increase in the revenues of the carriers, would be a vain and useless gesture, in so far as removal of discrimination against interstate commerce is concerned.

Appellants contend, however, that the authority to determine the reasonableness *per se* of the intrastate fares lay with the state authorities, and to justify the Interstate Commerce Commission in the alteration of such fares, it was not enough for the Commission merely to find that the raising of the intrastate fares to the interstate level would produce additional revenues for the carriers. If such findings were sufficient to enable the Interstate Commerce Commission to invade the reserved powers of the state, it would deprive the state authorities of all vestige of control over intrastate rates and fares, unless such rates and fares were equivalent to, or in excess of, the interstate rates and fares. This is so because it is virtually impossible for the state authorities to prove that increased intrastate rates and fares will not result in some increases in the revenues of the carriers.

A careful review of the decisions of the Interstate Commerce Commission and of this Court fails to disclose where either of these tribunals has gone so far as to hold that a mere showing that an increase in intrastate fares would cause an increase in the revenues of the carriers is sufficient to sustain a finding of undue discrimination against interstate commerce.

POINT 2

MERE ABILITY TO DEFEAT INTERSTATE FARES BY USE OF INTRASTATE FARES TO BORDER POINTS IS NOT EVIDENCE OF UNDUE DISCRIMINATION AGAINST INTERSTATE COMMERCE.

In further support of its conclusions that the Interstate Commerce Commission's finding of undue discrimination against interstate commerce is supported by adequate evidence, the Court below at page 487 (1358-1359) said:

> "* * * this disparity [between interstate and intrastate fares] is such that passengers destined to points outside the respective states were encouraged to purchase intrastate tickets to points near the state line, and then either buy tickets or pay cash for the remainder of the journey, thus, using the lower intrastate fare to defeat the higher interstate fare."

It is true that the employee witnesses of the Kentucky railroads testified that it was *possible* for the through interstate fares to be reduced by combinations of intrastate fares to the border line and interstate fares beyond. These witnesses, however, did not testify that such practices had been indulged in. Only three witnesses, namely, Aiken, Tucker and Tolleson, testified with respect to this subject. When questioned by counsel for the Kentucky interests as to whether he had personal knowledge of these alleged practices, witness Aiken said:

> "I have not encountered it individually." (R. 1153.)

On further cross-examination this same witness testified as follows:

> "I don't know anything about it definitely and it is only hearsay as far as I am concerned." (R. 1162.)

Witness Tucker on cross-examination testified as shown below:

> "Q. Personally, you don't know whether it is being done or not, do you?
> A. We do not, no." (R. 1174.)

Witness Tolleson was also asked about his knowledge of such alleged practices, and in response said:

> "Frankly, I don't know of any happening of that particular kind." (R. 1191.)

From the above it is clear that there is no testimony in this record that through interstate coach fares were being defeated by the lower Kentucky intrastate fares. Furthermore, such practices would have been illegal under the findings of this Court in *Baltimore & O. S. W. R. Co.* v. *Settle*, 260 U. S. 166. In the case just cited it was held that an interstate shipper could not lawfully defeat a through interstate rate by a combination of interstate and intrastate rates, even though the shipment was stopped enroute at the border point and reshipped from there under a separate bill of lading.

The Interstate Commerce Act condemns actual discrimination, not imaginary or unproven discrimination.

POINT 3

MAINTENANCE OF LOWER FARE INTRASTATE THAN INTERSTATE, EVEN THOUGH THE TWO CLASSES OF TRAFFIC ARE INTERMINGLED, IS NOT EVIDENCE THAT INTRASTATE TRAFFIC FAILS TO PAY ITS FAIR PROPORTIONATE SHARE OF COST OF MAINTAINING ADEQUATE RAILWAY SYSTEM.

In still further support of its conclusion that the finding of the Interstate Commerce Commission of undue dis-

crimination against interstate commerce was sustained by adequate evidence, the lower Court at page 487 of its opinion (R. 1359) said:

> "The two classes of traffic are inextricably intermingled; the same railways and the same cars carry both passengers; the same men operate the train in its intrastate journey and in its interstate journey. Under such conditions the effect of maintaining a materially lower rate intrastate than the reasonable interstate rate necessarily results in intrastate traffic failing to pay a fair proportionate share of the cost, maintenance and operation and is discriminatory against interstate traffic."

These appellants submit that before the Interstate Commerce Commission can make a valid finding that intrastate rates or fares cause discrimination against interstate commerce, it is essential for the evidence to show something more than that the two classes of traffic are handled in the same trains, and sometimes in the same cars, at different rates or fares. A review of the decisions cited by the Court below in support of the above excerpt, and of other decisions of this Court, wherein findings of undue discrimination against interstate commerce have been sustained, discloses that the decisions fall into two general groups. For convenience, the two groups will hereinafter be called "revenue cases" and "cost evidence cases", respectively.

The revenue cases consist of those wherein the Commission, acting under Section 15a of the Interstate Commerce Act, U. S. C. Title 49, Section 15a, has granted general increases in interstate rates or fares to enable the carriers as a whole, or by districts, to maintain and operate their properties efficiently. *Railroad Comm. of Wisconsin* v. *Chicago, B. & Q. R. Co.*, 257 U. S. 563; *State of New York* v. *United States*, 257 U. S. 591; and *United States* v *Louisi-*

ana, 290 U. S. 70, cited by the Court below, fall within this group. The first two, that is, the Wisconsin and New York cases, were the outgrowth of *Increased Rates, 1920*, 58 I. C. C. 220, while the last named, the Louisiana Case, resulted from the *Fifteen Per Cent Case*, 1931, 178 I.C.C. 539, *et seq.* In these cases, the Commission found, and their findings were sustained by this Court, that corresponding increases should be made in the intrastate rates and fares in order that intrastate fares might bear their fair proportionate part of the additional revenues required.

The cost evidence cases consist of those wherein the Commission has found upon *appropriate cost studies*, or *other cost evidence*, that the intrastate rates or fares were so low that they did not produce sufficient revenues to cover the cost of the service and to provide a fair return on the investment. *Florida v. United States*, 292 U. S. 1; and *Illinois Commerce Com. v. United States*, 292 U. S. 474, also cited by the Court below, fall within this second group, as will be shown by the following excerpts:

Florida v. United States, 292 U. S. 1, 9, 10, 11:

"Reviewing the history of the Cummer scale of intrastate rates on logs, and considering comparable interstate and intrastate rates, the Commission found that the Cummer scale was abnormally low and less than reasonably compensatory; that the defendants' revenue under the Cummer scale was 'insufficient under all the circumstances and conditions to cover the full cost of the service.'"

* * * * *

"If the revenues yielded by the Cummer scale are not sufficient to cover the cost of the service, as the *cost study* indicates, it would follow that part of the above amount would constitute a dead loss in net revenue." (Emphasis supplied).

Illinois Commerce Comm. v. *United States*, 292 U. S. 474, 484:

"But as we have already said it was for the Commission to determine whether the *cost study* was adequate or whether it was necessary to refine or supplement it in order to make it dependable evidence for the purpose of rate making. The study itself afforded evidence of the reasonableness of the rate fixed, and upon the whole record there was abundant support for the Commission's finding, which was carefully and thoroughly considered in its report." (Emphasis supplied).

The case at bar does not come within the scope of either of the groups described above. It is not a "revenue case" because it is not a situation where the State Commission declined to authorize increases in intrastate fares equal to those approved by the Interstate Commerce Commission under Section 15a. In *Ex Parte 148*, the Interstate Commerce Commission authorized an increase of 10 per cent in *existing* passenger fares to become effective February 10, 1942, but a like increase was also approved by the Railroad Commission of Kentucky effective on the same date.

The Kentucky railroads not only did not show any need of additional revenues but made no effort to do so. On the contrary, the record is plain that they are not in need of such revenues. This is demonstrated by the following testimony of E. N. Aiken, a principal witness for the Kentucky railroads at the hearing in *Kentucky Intrastate Fares, supra*:

"Q. Briefly why are you asking these increases in Kentucky?

A. To put our fares on an equality with the interstate fares such as we have in other states that we have asked.

* * * * *

Q. Would you go so far as to say that your chief reason for it is the need of additional revenue at the present time?

A. No, I don't think I would say that we are in need of additional revenue at this time." (R. 1160)

If further proof be necessary to show that these railroads are not in need of additional revenues, it is supplied by the following summary of Exhibit 10 (R. 1318, 1319) which shows the rates of return of the seven railroads upon whose petition *Kentucky Intrastate Fares* was instituted:

Year	Investment in Railway Property Including Cash, Materials and Supplies	Net Railway Operating Income	Rate of Return	Rate of Return Before Federal Income Taxes
1938	$2,664,905,079	$ 79,039,428	2.97	Not shown
1939	2,656,160,858	99,860,361	3.76	Not shown
1940	2,673,007,466	104,869,234	3.92	Not shown
1941	2,724,933,244	148,729,567	5.46	6.54
1942	2,758,645,770	167,173,888	6.07	10.84
1943*	2,790,719,290	196,763,666	7.05	17.96

* Estimated.

The above statistics were compiled and introduced in the record by these appellants but they differ but little from corresponding figures presented by the Kentucky railroads as shown by the following summary of Exhibit 19 (R. 1327, 1333)

Year	Investment in Railway Property, including Cash, Materials and Supplies	Net Railway Operating Income	Rate of Return
1938	$2,576,696,392	$ 79,971,549	2.98
1939	2,597,311,288	97,873,528	3.76
1940	2,595,362,091	102,674,183	3.95
1941	2,659,969,968	143,927,839	5.41
1942	2,710,500,486	156,601,762	5.78

The rates of return in both of the above tables were based on valuation shown by the carriers, which failed to accord proper credits for depreciation. If the rates of return had been based upon the 1940 valuations recommended by the Interstate Commerce Commission's Bureau of Valuation, they would have been considerably higher. This is shown by the following excerpt from the dissenting opinion of Commissioner Splawn, in which Commissioners Aitchison and Mahaffie concurred:

> "In my judgment the evidence in these proceedings falls far short of establishing that the failure of respondents to receive the additional revenue, which would result from increasing the present intrastate fares to the interstate level, operates to *interfere with* or *to thwart* the broad purpose of section 15a to maintain an efficient transportation system. Nor can it be said that under present conditions the failure of the State Commissions to permit increases in the present intrastate fares constitutes an obstruction to interstate commerce.
>
> In the Kentucky proceeding, for example, the relation of net railway operating income to investment in railway property including cash, materials, and supplies, for the seven principal respondents shows average rates of return, after deduction of Federal income taxes, as follows: 1938, 2.98 percent; 1939, 3.76 percent; 1940, 3.95 percent; 1941, 5.41 percent; 1942, 5.78 percent. In this connection it is of interest that based on 1940 valuations recommended by our Bureau of Valuation the average rates of return for the respective years indicated would be 4.18 percent, 5.31 percent, 5.57 percent, 7.81 percent, 8.50 percent, and 8.13 percent. The increase in net railway operating income for passenger traffic alone, 1942 over 1941, was $50,992,801 for the 12 class I respondents in the Ala-

bama proceeding, and $29,506,275 for the 7 principal respondents in the Kentucky proceeding." (R. 45-46.)

With respect to the propriety of considering the rates of return before deduction of Federal income taxes, it is sufficient to quote from *Increased Railway Rates, Fares and Charges, 1942*, 248 I.C.C. 545, 556:

> "We may observe that, while taxes have been deducted in stating net railway operating income in the foregoing table, we have held, Reduced Rates, 1922, 68 I.C.C. 676, 683, that
>
> 'railway corporations should, like other corporations, pay their Federal income taxes out of income rather than collect it, in effect, from the public in the form of transportation charges adjusted to enable it (them) to retain the designated fair return over and above the tax'."

The case at bar is not a "cost evidence" case because no cost study or other cost evidence was introduced or offered to show that the basic coach fare of 1.65 cents per passenger mile was insufficient under Section 15a of the Interstate Commerce Act to enable the Kentucky railroads to maintain their properties as adequate railway systems and to pay a fair return on their investments. On the contrary, there was evidence to show that these carriers had voluntarily maintained a basic coach fare of 1.5 cents per passenger mile on both interstate and intrastate traffic for several years subsequent to December 1, 1933, and that the Interstate Commerce Commission had found that this fare was not unreasonable or otherwise unlawful. 214 I.C.C. 174, 257. The evidence further shows that since this finding was made there have been tremendous increases in the freight and passenger revenues of the Kentucky railroads and the gross and net returns thereon.

Having shown that the instant case does not come within the scope of the decisions of this Court, cited by the Court below, in that it is neither a "revenue case" nor a "cost evidence case", appellants submit that the Court below erred in its holding at page 487 of its opinion that the intermingling and handling in the same trains and cars of interstate and intrastate traffic at lower rates or fares for intrastate traffic "necessarily results in intrastate traffic failing to pay a fair proportionate share of the cost, maintenance and operation and is discriminatory against interstate traffic." On the contrary, appellants assert that if this holding is sustained by this Court, it would be equivalent to a finding that a mere showing of a difference in interstate and intrastate rates or fares is sufficient to support a finding that the lower intrastate rates or fares constitute a discrimination against interstate commerce in violation of Section 13 (4) of the Interstate Commerce Act. Such finding, however, would be contra to the holding in *Florida* v. *United States*, 282 U.S. 194, 212, namely:

> "The Commission has no general authority to regulate intrastate rates and *the mere existence of a disparity between particular rates on intrastate and interstate traffic does not warrant the Commission in prescribing intrastate rates.*" (Emphasis supplied.)

POINT 4

PAST LOSSES ON PASSENGER TRAFFIC DO NOT CONSTITUTE EVIDENCE OF DISCRIMINATION AGAINST INTERSTATE COMMERCE

At page 487 of its opinion the Court below refers to the contention of these appellants that the Kentucky railroads are not in need of additional revenues and then says:

> "But the proposed increased rates are not based on the need for additional revenue. The proposed in-

crease is for the purpose of removing an unjust discrimination against interstate commerce which the Commission is empowered to do regardless of resulting increased revenues or the non-existence of any need for same." (R. 1359.)

No authority was cited by the District Court in support of the conclusion of law stated above. It may be that if the Kentucky railroads had shown by cost studies or other adequate cost evidence that the Kentucky intrastate fares were insufficient to provide for the maintenance of their properties and a reasonable return on their investment, it would not have been essential for the evidence to show that they were in need of additional revenues. In the absence of such showing, however, appellants submit that the above cited conclusion of law is erroneous.

It may be that the District Court itself realized the infirmity of this statement of the law because it immediately undertook to bolster same by referring to alleged losses sustained by the Kentucky railroads on their system operations, both interstate and intrastate, within and without Kentucky, in by-gone years. Two decisions of this Court are cited in support of the District Court's conclusion that these alleged losses should be taken into consideration in determining whether the finding of undue discrimination against interstate commerce by the Interstate Commerce Commission was supported by adequate evidence. Appellants submit, however, that neither of these decisions is relevant to the issues here.

In *Institutional Investors* v. *Chicago, M. St. P. & P. R. Co.*, 318 U.S. 523, certain interests contended that the war earnings of the railroads supported their view that certain junior securities might have some value in the future, although the findings of the Interstate Commerce Commission were to the contrary. This Court held, however, that there was no basis for concluding that these earnings

would be continued for any considerable period of time. In *St. Joseph Stock Yards Co.* v. *United States*, 298 U.S. 38, the owners of the stock yards contended that their rates and charges were not unduly high when measured by their operations and income for the depression year of 1932. The Court dismissed this contention and held that in determining rates and charges for the future it was proper for the administrative agency to consider the average earnings for the six-year period from 1927 to 1932, which included both good and bad years.

In the case at bar, it is shown that the Interstate Commerce Commission in 1936 prescribed a maximum coach fare thoughout the United States of 2 cents and had found that the coach fare of 1.5 cents maintained by the southern railroads on their interstate traffic was not unreasonable or otherwise unlawful. The position of these appellants is that if that decision was correct when made, then it is all the more proper to say that the Kentucky intrastate coach fare of 1.65 cents per passenger mile was not unreasonable or otherwise unlawful under the much more favorable conditions prevailing on the Kentucky railroads in 1943. In other words, this is not a case of using war earnings as a basis for reductions in rates under those approved for prewar conditions but it is a case of using these more favorable conditions as additional justification for the finding of lawfulness previously made in 1936.

But irrespective of the propriety of considering past losses in arriving at a rate for the future, appellants submit that under no circumstances should the Kentucky intrastate fares be increased over their pre-war level in order to take care of these alleged pre-war system losses. In *Federal Power Commission* v. *Natural Gas Pipe Line Co.*, 315 U. S. 575, at page 590, this Court said:

> *"But regulation does not insure that the business shall produce net revenues, nor does the Constitution re-*

quire that the losses of the business in one year shall be restored from future earnings by the device of capitalizing the losses and adding them to the rate base on which a fair return and depreciation allowance is to be earned. Galveston Electric Co. v. Galveston, 258 U. S. 388; San Diego Land and Town Co. v. Jasper, 189 U.S. 439, 446." (Emphasis added.)

The above excerpt is applicable to the present case and clearly demonstrates that the Commission can not lawfully permit the carriers to recoup in highly prosperous years of inflated and excessive earnings the losses incurred in former years, by permitting increases in fares, and particularly intrastate fares which have been passed upon by and found lawful by the state regulatory body.

The evidence of record amply demonstrates that under normal conditions the Kentucky carriers were able to show a more favorable financial result under a fare of 1.5 cents than under 2 cents. This is exemplified by their reverting to the 1.5-cent fare on January 15, 1939 after having charged a 2-cent fare for the preceding 14 months. It was also admitted by the carriers' witness Aiken, who testified as follows:

> Q. You mean by that the total revenue produced by the 1 1/2 cent fare was more than the total revenue being produced by the 2 cent fare?
>
> A. Generally speaking I would say that that is correct. (R. 1168)

Appellants submit that since the Kentucky carriers can not maintain a fare of more than 1.5 cents during normal conditions, they should not be permitted to impose a fare of 2.2 cents during the war period when the public is forced to use their services because of war-time restrictions, such as the rationing of gasoline and automobile tires.

E—Stabilization Program of Federal Government

POINT 1

THE INTERSTATE COMMERCE COMMISSION AND COURT BELOW FAILED TO ACCORD ANY WEIGHT TO THE STABILIZATION PROGRAM OF THE FEDERAL GOVERNMENT.

At the time the Kentucky railroads filed tariffs with the Railroad Commission of Kentucky providing for increases in their intrastate passenger coach fares from 1.65 to 2.2 cents per passenger mile, the Emergency Price Control Act of 1942 had been supplemented by the Inflation Control Act of 1943. A copy of Section 1 of the latter act, U. S. C. Supp. III, Title 50, Section 961, is incorporated in the Appendix of this brief. Furthermore, prior to its decision of May 31, 1943 holding that the Kentucky railroads had not shown the proposed increased passenger coach fares to be just and reasonable, the Kentucky Commission had received a copy of the President's Executive Order 9328 of April 3, 1943, Paragraph 4 of which reads as follows:

> "The attention of all agencies of the Federal Government, and of all State and municipal authorities, concerned with the rates of common carriers or other public utilities, is directed to the stabilization program of which this order is a part so that rate increases will be disapproved and rate reductions effected, consistently with the Act of October 2, 1942, and other applicable federal, state or municipal law, in order to keep down the cost of living and effectuate the purposes of the stabilization program." (R. 1071)

Appellants submit that the Kentucky Commission acted properly in giving due consideration to the Federal stabilization program set out in the documents herein re-

ferred to, in reaching its findings concerning the Kentucky intrastate fares, and that the Interstate Commerce Commission and the District Court erred in not giving weight to this program in their findings of fact and conclusions of law.

Since this point is covered more fully in a brief to be filed by counsel for Office of Price Administration in Docket No. 592, a companion case, it will not be pursued further herein.

CONCLUSION

For the foregoing reasons, these appellants urge that the corrected order of the Interstate Commerce Commission of May 8, 1944, requiring increases in the Kentucky intrastate passenger coach fares, be held void and in contravention of the Fifth and Tenth Amendments of the Federal Constitution; that the decree of the District Court be reversed, with directions to that Court to enter a decree, permanently enjoining the enforcement, operation and execution of said corrected order of the Interstate Commerce Commission.

Respectfully submitted,

ELDON S. DUMMIT
Attorney General
Frankfort, Ky.

M. B. HOLIFIELD
Assistant Attorney General
Frankfort, Ky.

J. E. MARKS
145 East High Street
Lexington 4, Ky.

Counsel for Commonwealth of Kentucky and Railroad Commission of Kentucky

Dated at
Frankfort, Ky.
March 28, 1945.

APPENDIX

Section 13 (3) of Interstate Commerce Act, U. S. C. Title 49, Section 13 (3).

Whenever in any investigation under the provisions of this chapter, or in any investigation instituted upon petition of the carrier concerned, which petition is hereby authorized to be filed, there shall be brought in issue any rate, fare, charge, classification, regulation, or practice, made or imposed by authority of any State, the commission, before proceeding to hear and dispose of such issue, shall cause the State or States interested to be notified of the proceeding. The Commission may confer with the authorities of any State having regulatory jurisdiction over the class of persons and corporations subject to this chapter or chapter 12 of this title with respect to the relationship between rate structures and practices of carriers subject to the jurisdiction of such State bodies and of the commission; and to that end is authorized and empowered, under rules to be prescribed by it, and which may be modified from time to time, to hold joint hearings with any such State regulating bodies on any matters wherein the commission is empowered to act and where the rate-making authority of a State is or may be affected by the action taken by the commission. The commission is also authorized to avail itself of the cooperation, service, records, and facilities of such State authorities in the enforcement of any provision of this chapter or chapter 12 of this title.

Section 13 (4) of Interstate Commerce Act, U. S. C. Title 49, Section 13 (4).

Whenever in any such investigation the commission, after full hearing, finds that any such rate, fare, charge, classification, regulation, or practice causes any undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce on the

one hand, and interstate or foreign commerce on the other hand, or any undue, unreasonable, or unjust discrimination against interstate or foreign commerce, which is hereby forbidden and declared to be unlawful, it shall prescribe the rate, fare, or charge, or the maximum or minimum, or maximum and minimum, thereafter to be charged, and the classification, regulation, or practice thereafter to be observed, in such manner as, in its judgment, will remove such advantage, preference, prejudice, or discrimination. Such rates, fares, charges, classifications, regulations, and practices shall be observed while in effect by the carriers parties to such proceeding affected thereby, the law of any State or the decision or order of any State authority to the contrary notwithstanding.

Section 15a of Interstate Commerce Act, U. S. C. Title 49, Section 15a.

(1) When used in this section, the term "rates" means rates, fares, and charges, and all classifications, regulations, and practices relating thereto.

(2) In the exercise of its power to prescribe just and reasonable rates the Commission shall give due consideration, among other facts, to the effect of rates on the movement of traffic by the carrier or carriers for which the rates are prescribed; to the need, in the public interest, of adequate and efficient railway transportation service at the lowest cost consistent with the furnishing of such service; and to the need of revenues sufficient to enable the carriers, under honest, economical, and efficient management to provide such service.

Section 1 of the Inflation Control Act of 1942, U. S. C. Supp. III, Title 50, Section 961.

In order to aid in the effective prosecution of the war, the President is authorized and directed, on or before November 1, 1942, to issue a general order stabilizing prices,

wages, and salaries, affecting the cost of living; and, except as otherwise provided in this Act, such stabilization shall so far as practicable be on the basis of the levels which existed on September 15, 1942. The President may, except as otherwise provided in this Act, thereafter provide for making adjustments with respect to prices, wages, and salaries, to the extent that he finds necessary to aid in the effective prosecution of the war or to correct gross inequities: Provided, that no common carrier or other public utility shall make any general increase in its rates or charges which were in effect on September 15, 1942, unless it first gives thirty days notice to the President, or such agency as he may designate, and consents to the timely intervention by such agency before the Federal, State, or municipal authority having jurisdiction to consider such increase.

FILE COPY

Office - Supreme Court, U. S.
FILED
MAR 30 1945
CHARLES ELMORE CROPLEY
CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944.

No. 574

THE STATE OF ALABAMA AND PUBLIC SERVICE COMMISSION, THE STATE OF TENNESSEE AND THE RAILROAD AND PUBLIC UTILITIES COMMISSION OF THE STATE OF TENNESSEE, COMMONWEALTH OF KENTUCKY AND RAILROAD COMMISSION OF KENTUCKY, *Appellants*

VS.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION AND FRED M. VINSON, ECONOMIC STABILIZATION DIRECTOR BY CHESTER BOWLES, PRICE ADMINISTRATOR, ET AL. *Appellees.*

APPEALED FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF KENTUCKY

BRIEF AND ARGUMENT OF APPELLANTS, STATE OF ALABAMA AND PUBLIC SERVICE COMMISSION.

WILLIAM N. MCQUEEN,
Acting Attorney General.
FORMAN SMITH,
Assistant Attorney General
On The Brief.



INDEX

SUBJECT INDEX

Argument 8

History of Passenger Fares 7

History of Proceedings 4

Jurisdiction 1

Questions Presented 2

Reference to Official Reports 2

Specifications of Error 6

Statutes Involved 3

Summary of Argument 8

INDEX—Continued

TABLE OF CASES AND DECISIONS CITED

Alabama Intrastate Passenger Fares, 258 I. C. C. 113 ..... 2, 5

Atchison T. & S. F. R. R. Co. v. United States, 284 U. S. 248 ..... 12, 14, 15

Ex Parte 148, 248 I. C. C. 545 ..... 4, 10, 11, 13, 15, 16, 18

Fifteen Percent Cases, 226 I. C. C. 41 23

New York v. United States, 257 U. S. 591 ..... 3, 21, 30

Passenger Fares and Surcharges, 214 I. C. C. 174 ..... 4, 10, 11, 15

Railroad Comm. of Wisconsin v. Chicago, B. & Q. R. R. Co., 257 U. S. 561 ..... 3, 21, 29, 30

State of Alabama, et al. v. United States, 56 Fed. Sup. 478 2

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1944.

No. 574

THE STATE OF ALABAMA AND PUBLIC SERVICE COMMISSION, THE STATE OF TENNESSEE AND THE RAILROAD AND PUBLIC UTILITIES COMMISSION OF THE STATE OF TENNESSEE, COMMONWEALTH OF KENTUCKY AND RAILROAD COMMISSION OF KENTUCKY, *Appellants*

VS.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION AND FRED M. VINSON, ECONOMIC STABILIZATION DIRECTOR BY CHESTER BOWLES, PRICE ADMINISTRATOR, ET AL.
Appellees.

APPEALED FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF KENTUCKY

JURISDICTION

The jurisdiction of this Court is envoked under Section 210 of the Judicial Code, U. S. C. A., Title 28, Section 47 (a).

The order of the District Court for the Western District of Kentucky was entered on August 3, 1944.

The petition for appeal was duly presented to the District Judge and an order was signed allowing the appeal on September 29, 1944. Jurisdiction was noted by this Court on November 13, 1944.

REFERENCE TO OFFICIAL REPORTS

The report of the Interstate Commerce Commission in Alabama Intrastate Passenger Fares and related cases is reported at 258 I. C. C. 133.

The opinion of the District Court for the Western District of Kentucky, entitled State of Alabama, et al v. United States, et al, State of Tennessee, et al v. United States, et al, Commonwealth of Kentucky, et al v. United States, et al, is reported in 56 Fed. Supp. 478.

QUESTIONS PRESENTED

1. The questions presented by Appellants are whether the order and decision of the Interstate Commerce Commission constituted an unlawful disregard of Section 13 (4) of the Interstate Commerce Act and the stabilization legislation by disregarding wartime conditions, and acting instead upon peacetime considerations in annulling the order of the State Commissions which declined to authorize intrastate passenger fare increases not presently necessary.

2. Whether the Interstate Commerce Commission, under Section 13 (4) of the Interstate Commerce Act, has authority to order the increase of an existing profitable intrastate passenger fare where there is no sufficient evidence of discrimination against persons or localities.

3. Whether an increased interstate fare authorized without a hearing by the Interstate Commerce Commission conforms to the high standard of certainty necessary to give an order of a subordinate agency, such as the Interstate Commerce Commission, precedence over a State rate.

STATUTES INVOLVED

The following statutory provisions are printed in Appendix A to this brief:

1. Section 13 (4) of the Interstate Commerce Act, U. S. C. A., Title 49.

2. Section 15a of the Interstate Commerce Act, paragraphs (2), (3), and (4), U. S. C. A., Title 49.

In effect at the time of the decis .n of the cases of Railroad Comm. v. Chicago B. & Q. R. Co. and New York v. United States, hereinafter cited.

3. Section 15 of the Interstate Commerce Act, U. S. C. A., Title 49.

4. Section 15a of the Interstate Commerce Act, U. S. C. A., Title 49. Now in effect.

HISTORY OF THESE PROCEEDINGS

The proceedings involved in this appeal began after the Southern Passenger Association filed a petition with the Interstate Commerce Commission on July 14, 1942, seeking permission on behalf of the Southern railroads to increase interstate passenger coach fares from the general basis of 1.65 to 2.2 cents per mile. By order of August 1, 1942, under the proceeding in Ex Parte 148, Increased Railway Rates, Fares and Charges, 1942, and without a hearing, the Commission authorized these railroads to apply a 10 per cent increase to fares on the basis of 2 cents per mile, which in 1936, upon evidence compiled and submitted in 1935, had been established as a maximum reasonable fare in Passenger Fares and Surcharges, 214 I. C. C. 174. The railroads involved in this proceeding then filed tariffs, effective October 1, 1942, making this increase in interstate fares. By procedures in compliance with state laws, the railroads sought a like increase in intrastate fares in many states, including Alabama, Tennessee, Kentucky and North Carolina.

After due hearing the Alabama Public Service Commission, and regulatory bodies of Tennessee, Kentucky and North Carolina denied the increase on the ground that the carriers had failed to show that

the increase sought was just and reasonable. Shortly thereafter, the Alabama Public Service Commission and the North Carolina Commission filed separate petitions with the Interstate Commerce Commission seeking an investigation into the reasonableness of the interstate level of fares. These petitions were denied by the Interstate Commerce Commission without a formal hearing or report.

Following denial of the increases sought in intrastate fares, the principal railroads by separate petitions for each of the named states invoked the jurisdiction of the Interstate Commerce Commission under Section 13 (4) of the Interstate Commerce Act. The Commission instituted four separate investigations and conducted four separate hearings, the Price Administrator appearing in each of the hearings. The four proceedings were argued together before the Commission and decided in one report entitled Alabama Intrastate Fares, 258 I. C. C. 133. Application for rehearing was duly made and denied by the Commission. Thereafter, the Commission entered its order commanding the involved railroads to increase their intrastate fares to the level of the interstate fares.

In the Thirteenth Section investigation, the Commission found (1) that the interstate fares on the basis of 2.2 cents per mile are just and reasonable; (2) that the intrastate fares in Alabama, Kentucky, North Carolina and Tennessee were lower than the interstate fares (3) that passenger trans-

portation conditions in interstate and intrastate commerce are substantially similar; (4) that such transportation in the same trains and generally in the same cars results in undue and unreasonable advantage and preference of the intrastate passengers, and undue and unreasonable disadvantage or prejudice of interstate passengers; (5) that the lower intrastate fares produce at least $2,275,000.00 per annum less than if the level of interstate fares had been in effect, and traffic moving under the lower intrastate fares "is not contributing its fair share of the revenues required to enable the respondents to render adequate and efficient transportation service," and (6) that the maintenance of the lower intrastate fares resulted in violation of Section 13(4) of the Interstate Commerce Act. The Commission held that unlawfulness should be removed by increasing the intrastate fares to the interstate level.

SPECIFICATION OF ASSIGNED ERROR TO BE URGED.

The District Court of the United States for the Western District of Kentucky erred as a matter of law in concluding that the findings and order of the Interstate Commerce Commission were based on substantial evidence, did not involve errors of law, and were not arbitrary, unreasonable or capricious. In particular, the District Court erred, as a matter of law, in concluding that there was substantial evidence of record to sustain, consistently with the

Commission's duty to give full effect to wartime conditions, and national stabilization legislation, the Commission's finding that an undue, unreasonable and unjust discrimination against interstate commerce, within the meaning of Section 13 (4) of the Interstate Commerce Act, had resulted from the decisions and orders of the involved State Commissions in refusing to permit intrastate fares to be increased to the interstate level.

HISTORY OF SOUTHERN PASSENGER FARES

We have been furnished with a copy of the brief being filed in this cause by Fred M. Vinson, Economic Stabilization Director, by Chester Bowles, Price Administrator, which we adopt as our own.

The history of Southern Passenger Fares is comprehensively stated therein, and a repetition here would only burden the Court unnecessarily. We also adopt as our own the briefs being filed by the State of Tennessee and the Commonwealth of Kentucky.

SUMMARY OF ARGUMENT.

The position assumed by the appellants (State of Alabama and Alabama Public Service Commission) is briefly as follows:

1. The method used by the Commission in its attempt to establish the interstate passenger fares as reasonable does not conform to the high standard

of certainty required to permit its order to take precedence over a state made rate or fare.

2. The order of the Commission authorizing the involved railroads to increase their interstate passenger coach fares to the level of 2.2 cents per mile was issued without a hearing and without authority of law, and is, therefore, void, and cannot support the finding that the interstate fare is reasonable.

3. So long as a state made rate or fare produces all revenues necessary to provide adequate and efficient railroad transportation service and, in addition thereto, a reasonable return to the carriers, it is impossible for such a rate to impose a burden on interstate commerce or to create an undue, unreasonable, or unjust discrimination against interstate or foreign commerce within the meaning of Section 13 (4) of the Interstate Commerce Act.

4. Section 15a of the Interstate Commerce Act requires that the Commission consider the national stabilization legislation, and that in this proceeding it failed so to do.

ARGUMENT

It is a matter of general knowledge that during a normal economic era, the railroads in the Southern District suffer a deficit from their passenger operations and that a support factor is incorporated in freight rates to compensate the carriers for this

deficit. This is not only a matter of common knowledge, but is supported by the testimony of the railroad's own witness (R. 713). We do not contend that State-made rates or fares should not be sufficient to contribute their pro rata share of the revenues necessary to enable the carriers to render adequate and efficient transportation service, but we do contend that whenver State rates are sufficiently high that they do contribute their pro rata share of such revenues, they cannot possibly impose any undue, unreasonable or unjust discrimination on interstate or foreign commerce within the meaning of Section 13(4) of the Interstate Commerce Act.

The basic facts involved in this proceeding can be illustrated by a hypothetical situation. Assume that during 1936 a bus operator covered a route averaging only two passengers per mile traveled, his operation costs being twelve cents per mile and his fares being five cents per mile. This operator also hauls a certain amount of express, the rate upon which is designed to compensate for the two cent per mile passenger deficit and also allow an overall operating profit in addition to normal express rates. In 1942 wartime restrictions practically eliminate all competition, his express profits increases more than a thousand percent and, instead of hauling an average of two passengers per bus mile, he now hauls twenty, five of whom are required to stand. His costs of operation have increased to twenty cents per mile.

Has this carrier now, when the public is forced to use his services, a right to increase his passenger fares on an alleged deficit from past passenger operation? There was no deficit; the public paid any loss he might have suffered from passenger operations by the support factor incorporated in the express charges. Such a carrier now clearly has a profit of eighty cents per mile plus the support factor incorporated in express charges and the latter multiplied many times over by increase in express traffic. The principles in the above illustration do not vary from the basic principles involved in the case at bar.

THE COMMISSION'S METHOD OF DETERMINING THE REASONABLENESS OF THE INTERSTATE FARE.

In 1936, upon evidence compiled in 1935, the Commission found that a passenger coach fare in excess of two cents per mile unreasonable and unlawful, but that a minimum fare on the basis of one and one-half cents per mile was not unreasonable or otherwise unlawful. See Passenger Fares and Surcharges, 214 I. C. C. 174. In Jaunary 1942, under Ex Parte 148, 248 I. C. C. 545, the Commission permitted an increase in the passenger fares then in effect of ten percent, refusing to prescribe such increases as reasonable and retaining jurisdiction for the purpose of investigating the reasonableness of any particular fare or rate. On July 14, 1942, an application was filed with the Commission seeking authority to in-

crease the interstate passenger fares from the 1.65 basis to 2.2. This application was filed under Docket No. 26550, the Docket Number of the1936 Passenger Fare case reported at 214 I. C. C. 174, whereupon, without hearing, the Commission dismissed the application and ex mero motu amended its original Ex Parte 148 Order authorizing such an increase. This Order of the Commission is set forth at page 982 of the Record and we invite its perusal. Thereafter the State of Alabama and the State of North Carolina filed applications or petitions with the Commission seeking an investigation into the reasonableness of the interstate fares. The two states' applications or petitions were denied and the Commission refused to institute an investigation.

FALLACIOUSNESS OF THE COMMISSION'S METHOD OF DETERMINING THE REASONABLENESS OF THE INTERSTATE FARES.

The first fallacy is that the Commission takes a fare, established on evidence compiled in 1935, and to this, without inquiry into the 1942 reasonableness of such fare, applies a ten percent increase to such fare in a "finance case." The Commission entirely ignored their finding in the same 1936 case that it also found that a fare based on one and one-half cents per mile was "*not unreasonable or otherwise unlawful.*" Only one time in history has this Court set aside an order of the Commission on the

ground that the record was stale (*Atchison T. & S. F. Ry. v. United States*, 284 U. S. 248). However, there is a great deal of similarity between the Atchison case and the case now before this Court. In the Atchison case the Record was closed on September 22, 1928, and submitted to the Commission on July 1, 1929. The first report of the Commission was made on July 1, 1930, the order of July 1 to go into effect October 1, 1930. In September, 1930, the carriers asked for a rehearing, which was denied in November, 1930. In the application for rehearing the carriers alleged and offered to prove that the order would reduce the gross and net operating revenues in the Western District not less than twenty million dollars annually In the Atchison case this Court held, "That the record pertains to a different economic era and furnishes no adequate criterion of present requirements. While the effects of the widespread economic disturbance have had a progressive manifestation, they had been sufficiently revealed in February, 1931, when the second petition for rehearing was made, to compel the conclusion that the record of 1928 afforded no sufficient basis for the order of the Commission." In the Atchison case three years had elapsed from the time the evidence was compiled until the Commission denied the second application for rehearing. In the Alabama case seven years had elapsed between the time the evidence had been compiled in Passenger Fares and Surcharges, supra, and the time of the hearing in the Thirteenth Section investigation. Approximately the same time had elapsed between the 1936 proceeding and the time Alabama and North Carolina

filed their applications for an investigation into the reasonableness of the interstate fares. True Ex Parte 148 had been held, but in Ex Parte 148 the Commission admitted that in such a proceeding it could not investigate the reasonableness of any particular rate or fare, using the following words:

"A Nation-wide increase, chiefly on a percentage basis, is now proposed. Some important rates average somewhat higher than those effective in 1929, while others are generally lower. Obviously, there can be no detailed ironing out of inequalities in this proceeding" (248 I. C. C., second paragraph, at page 607.)

"In an appropriate order made in this proceeding on January 21, 1942, we found that the increases in fares proposed is necessary to enable the petitioners to *continue* to render adequate and efficient railway-transportation service during the present emergency, and that the proposed increased fares will be reasonable and lawful. We therein approved the proposed increased fares, subject to a suitable rule for the disposition of fractions stated in the order. (Emphasis supplied)

"All our outstanding orders, as amended, authorizing or prescribing interstate and intrastate fares, or bases of fares, were modified by that order, effective concurrently with the establishment of the increased fares therein ap-

proved, to the extent necessary to permit the authorized increase to be added to the interstate and intrastate fares approved or prescribed in, or maintained or held by virtue of, such outstanding orders. We retained jurisdiction for the purpose of determining, if need be, the lawfulness of any particular fare or fares resulting from that order. Increased fares were filed and became effective February 10, 1942." (248 I. C. C. at page 565.)

"The rates and charges increased as herein permitted are not prescribed rates and charges within the meaning of Arizona Grocery Co. v. Atchison, T. & S. F. Ry. Co., 284 U. S. 370." (248 I. C. C. at page 613.)

In the Atchison case conditions had changed from an era of prosperity to the beginning of an economic depression between the time the evidence had been submitted and the final order entered. In th Alabama case conditions had changed from an economic depression in 1936, into a "wartime railroad boom" between the time the reasonableness of the 2 cent maximum fare had been established and the time of the Commission's Thirteenth Section order. In the Atchison case there was a difference of one hundred million dollars a year between the 1930 level and the average for the proceeding five years in the railroad's net operating income. In the Alabama case, and as shown by the Commission's report, there was a fifty million dollar difference

in the operating revenues for the twelve railroads operating in Alabama alone. (This difference is computed by averaging the deficits for 1936 through 1941, and adding thereto the 1942 income. R. 13.) And this from passenger operations; in the Atchison case the difference was shown for the Western District; in the Alabama case the difference is shown for one state alone. If such were computed for the entire Southern District, it would obviously exceed the hundred million dollar difference shown in the Atchison case. We, therefore, respectfully submit that, if the record in the Atchison case was too stale to support the Commission's order, the only conclusion that can be reached in the Alabama case, since the evidence is at least as stale, if not more so than the Atchison case, is that the method used by the Commission in attempting to establish the reasonableness of the interstate fares *pertains to a different economic era and furnishes no adequate criterion of present requirements.*

THE EXISTING INTERSTATE COACH PASSENGER FARE IS AN ILLEGAL FARE.

The Passenger Fare and Surcharge proceeding was the first, and so far as we are able to ascertain, the last comprehensive investigation into the matter of the reasonableness of passenger fares. The Commission was petitioned in Ex Parte 148 to permit a ten percent increase in the existing fares. No one, either with the Commission or with those participating in the proceeding, ever considered that the one and one-half cent fares then in effect would be in-

creased to two and two-tenths cents per mile. We believe that the following excerpts from Ex Parte 148 (248 I. C. C. 545) will clearly disclose that the Commission did not in that proceeding consider such an increase. (The numerals following the excerpts indicate the page of 248 I. C. C. from which the quotation is taken.)

> "In petitions filed in December 1941, heard in this proceeding, the carriers by rail subject to our jurisdiction asked us to make certain orders necessary to enable them to increase their rates, fares, and charges in interstate or foreign commerce by ten percent * * *." 549.

> "PETITIONERS' PROPOSALS. Class 1 Railroads.—The first petition was filed December 13, 1941, by substantially all class 1 railroads of the United States and some railroads of other classifications. They requested authority to increase immediately their freight rates and charges and passenger fares in the manner and to the extent therein set forth. The increases sought are generally stated as follows:

> "Passenger: A uniform increase of 10 percent in all fares, including rates and charges for milk and cream and articles grouped therewith as published in passenger tariffs, * * *" 550.

"The petitioners do not regard any issue as to the fair value of the property as necessarily involved. * * * From our study of the record, it does not seem necessary for our determination to enter into a discussion of the value of the common carrier property of the petitioner. The proceeding has not taken on the aspects of a 'fair return' case. As stated by counsel for Class 1 petitioners at the opening of the hearing, this is a revenue case, not a rate case." 555.

"In an appropriate order made in this proceeding on January 21, 1942, we found that the increase in fares proposed is necessary to enable the petitioners to continue to render adequate and efficient railway-transportation service during the present emergency, and that the proposed increased fares will be reasonable and lawful. * * *" 565.

"A Nation-wide increase, chiefly on a percentage basis, is now proposed. Some important rates average somewhat higher than those effective in 1929, while others are generally lower. Obviously there can be no detailed ironing out of inequalities in this proceeding." 607.

"It would be desirable, if feasible, to consider the needs of the railways individually, and to adjust their respective schedules to meet their several needs. The exigencies of the case do not permit such refinement." 609.

"On all passenger traffic in the year ending September 30, 1941, the average was 1.754 cents, the lowest rate per mile in railroad history. The average increase per mile proposed is thus not more than 2.3 mills in sleeping and parlor cars, 1.51 *mills in coaches*, and 1.754 mills on all passenger traffic." 564—(Emphasis supplied)

"The increase authorized are upon the present going rates, speaking as of the date of this report, and rates published and filed but not yet effective, but not upon rates held in abeyance by tariffs naming reduced rates with a future expiration date to be revived upon the expiration by limitation of time of the now effective reduced rates. * * * *" 612.

We think, and submit to this Court, that what the petitioners in Ex Parte 148 had in mind, what the Commission had in mind, and what others interested in the proceeding had in mind, was that the passenger fares in existence as of the date of the Commission's order of January 21, 1942, would be increased 10 percent. No other interpretation appears possible. Obviously, the railroads, petitioners in the Thirteenth Section proceeding, also were convinced that the January 21, 1942 order of the Commission only authorized a 10 percent increase in their existing 1.5 cent fares. This is evidenced by the fact that shortly thereafter they placed this fare into effect; that they sought an identical increase

before the various State Commissions, which being granted, a 1.65 intrastate fare resulted for both interstate and intrastate; that they caused the Souhern Passenger Associaion to file an application with the Commission seeking to increase their interstate fares from 1.65 to 2.2 cents per mile, which resulted in the Order dated August 1, 1942. (R. 928.)

As we understand the authority of the Interstate Commerce Commission to determine rates, etc., such authority is derived from Section 15, paragraph 1, U. S. C. A., Title 49, which provides that the Commission, *after full hearing*, upon a complaint made as provided in Section 13 of the Interstate Commerce Act, or, *after full hearing*, under an order for investigation and hearing made by the Commission on its own initiative may prescribe fares, etc. It appears clear that the Commission undertook to issue an order permitting the railroads herein involved to increase their interstate fares from 1.65 to 2.2 cents per mile, or on that basis, without any hearing whatsoever, and without any evidence being presented to support such an order. We realize that the order recites the following:

> "It further appearing, that on July 14, 1942, the railroads operating in the southern passenger association territory filed a petition in No. 26550, to which no reply or protest has been received, seeking a modification of our findings and outstanding orders therein to the extent necessary to enable such petitioners to

publish and file tariffs increasing their basic coach fare from 1.65 cents (1.5 plus ten percent) to 2.2 cents (2 cents plus ten percent) permile:

"And it further appearing, that a basic coach fare of 2 cents per mile was approved by the Commission for application prior to Ex Parte No. 148 on railroads generally throughout the country, including the lines of said petitioners; that a general increase of 10 percent was authorized to be made in all passenger fares in Ex Parte No. 148, for the reasons set forth in the report therein, supra; and that a basic coach fare of 2.2 cents per mile is now maintained on Class 1 railroads generally throughout the country, with the exception of the aforesaid petitioners:

"It is ordered, that the said petition in No. 26550 be, and it is hereby, denied.

"It is further ordered, that the order of January 21, 1942, in Ex Parte No. 148, be, and it is hereby, further modified so as to authorize the aforesaid petitioners to apply the increase of 10 percent approved in said order to a basic coach fare or 2 cents per mile on the lines of said petitioners, * * * *."

However, we respectfully insist that a "full hearing" is a condition preceding the Commission's

authority to prescribe reasonable rates of fares. No such proceeding was ever held authorizing or prescribing a 2.2 interstate fare for the railroads affected by the Alabama Thirteenth Section proceeding.

DISCUSSION OF RAILROAD COMMISSION OF WISCONSIN V. CHICAGO, BURLINGTON & QUINCY, 257 U. S. 561, AND NEW YORK V. UNITED STATES, 257 U. S. 591.

These two cases, as we understand them, are exactly the same as now presented to this Court, *with one important exception.* The exception being that at the time of the Commission's orders in these cases Congress had enacted a most novel and important feature of the Act (Interstate Commerce Act), which required the Commission to prescribe rates so as to enable the carriers as a whole, or in groups selected by the Commission, to earn an aggregate annual net railway operating income equal to a fair return on the aggregate value of the railway property used in transportation. For two years the return was to be five and one-half per cent, with one-half per cent for improvements, and thereafter to be fixed by the Commission. The Act further provided that the return should be on the basis of the *Commission's* valuation. In both of these cases there was a factual finding that the intrastate fares did not produce their pro rata share of the revenues necessary to permit the carriers to earn the five and

one-half plus one-half per cent for improvements income on the Commission's valuation of the property. It is, therefore, obvious that the lower intrastate fares did actually impose a "burden on interstate commerce." This Court in both cases held that upon evidence almost identical to that offered in the Alabama Thirteenth Section proceeding before the Commission, there was no substantial evidence to support the Commission's finding of discrimination against persons and localities under Section 13 (4) of the Interstate Commerce Act, to justify a state-wide order of the kind here made.

The "fair return" provisions of the Interstate Commerce Act were eliminated by an Act of Congress (45 Stat. 912, 15a and 15b, U. S. C. A., Title 49). Undoubtedly the Commission may consider the matter of a fair return under the protectory provisions guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution, insofar as interstate rates are concerned, and the States must also in fixing rates and fares allow a fair return to the railroads under the same constitutional provisions, but the amount of the profit, in excess of a fair return, on intrastate commerce is now left to the States. The Commission may in a Thirteenth Section proceeding order a state-wide increase of intrastate rates or fares when it makes a factual finding that the lower intrastate fares or rates are not contributing their fair share of the revenues required to enable the carriers to render adequate and efficient transportation service, when

such a factual finding is based upon substantial evidence. But the Commission cannot increase an intrastate fare higher than necessary to fullfil this purpose. The evidence is conclusive in this case that the state-made fares are contributing, and, at all times they have been in effect due to any state action, have contributed all of the revenues required to enable the involved railroads to render adequate and efficient transportation service. The difference as we see it is that the State Commissions take the position that this is a wartime crisis and so long as the state-made rates are sufficiently high as to cover all costs of operation, including all taxes (exen excess profits taxes), and in addition thereto provide the carriers with the highest passenger earnings in the past score of years they are sufficient.

REVENUES REQUIRED FROM PASSENGER OPERATIONS TO ENABLE THE RAILROADS TO RENDER ADEQUATE AND EFFICIENT TRANSPORTATION SERVICE.

We have previously stated that it was a matter of public knowledge that freight rates contain a support factor to allow the railroads to enjoy an overall profit despite an accepted passenger operation deficit. We have cited the railroad's witness in support of this (R. 713). Such has been the consistent holding of the Commission in past rate cases. For example, in the "Fifteen Percent Case," 226 I. C. C. 41, the Commission authorizing increases of freight rates up to 10 per cent stated (p. 54):

"This deficit in passenger traffic as a whole has continued from at least 1926 mounting slightly thereafter. *Passenger Fares and Surcharges*, 214 I. C, C. 174, 182. The interrelation of the freight and passenger traffic has often been commented on by us, and we have declined to the proposition again repeated here by certain protestants that we can authorize no increase in freight rates to correct deficiencies in aggregate earnings growing out of the inability of the passenger business to meet its full share of the revenue burden. *Revenue in Western District*, 113 I. C. C. 3, 22-23, *Fifteen* Percent case, 1931, 178 I. C. C. 539, 565; * * * * *"

The Commission in its report attempts to use past passenger deficits as justification for increasing the profitable intrastate fares. Permit us to repeat the testimony of the railroads' witness regarding this:

"Assuming that for five years to come, or six years to come, the present volume and conditions are going to fairly hold. And we must remember this, that passenger deficits did not begin in 1936 when the Interstate Commerce Commission first required them to be reported, but my own knowledge for Southern Railway System Lines is that there was a deficit all the way back to 1921, and (fol. 1621) I think that

condition pretty generally obtained in the Southern Region."

"Examiner Stiles: Hasn't that been considered in making the freight rates, hasn't it been considered in every freight case of any proportions?

"The Witness: Of course that is taken into consideration.

"Examiner Stiles: So that you would not hope to arrive at a passenger revenue that would wipe out the deficit of those past years.

"The Witness: No, I am merely showing the comparison. What we specifically are doing here of course is to seek to make the fares and charges in the several states the same as on interstate business, and get an equal level of passenger fares and rates all over the country. * * *" (R. 713.)

It is fundamental that if passenger operation deficits are supported by freight rates higher than freight costs would justify as reasonable and passenger fares are increased to permit profits sufficient to recoup past deficits the imposition on the public is fallacious. In the first place, there is no deficit to which the railroads can claim that they are entitled. Past deficits in passenger operations

have been paid for by the public in the form of higher freight rates than freight operating costs would justify as reasonable.

We particularly call to the Court's attention that all orders permitting the railroads to increase their fares to the 2.2 cents per mile basis were entered in Ex Parte 148, supra. (Except this Thirteenth Section proceeding.) That the Commission has always considered Ex Parte 148 a war time emergency proceeding, and it is so limited by its own provisions. The Commission being unable to answer the proposition presented regarding the freight rate support factor, dismissed it with the words:

> "If freight traffic is now producing more than a fair return for the above-mentioned or any other reason, it may be dealt with in an appropriate proceeding." (R. 30.)

This appears to impose an impossible task on the public. The evidence clearly presents the conclusion that the higher fares were impractical, and that the railroads suffered a deficit from their passenger operations, even at the reduced fares, so long as private automobiles, and other forms of competition were available to the public. Therefore, the freight rate support factor was necessary to permit the railroads to maintain an adequate transportation system. The only evidence before the Commission as to future expectations is found at page 714 of the Record, "Now, we cannot of course hope for

any era of prosperity long enough to offset past passenger deficits. We expect passengers to fall back into the deficit class just as soon as the war is over. That was the experience following the last war, and I see no reason why it should not follow this war also." Therefore, so far as this record is concerned, the Commission should not attempt to "change its horses in the middle of the stream," change its allocation of support revenues and attempt to force on the public the necesity of attempting to institute rate proceedings in the hundreds of freight rate cases wherein the "passenger support factor" was incorporated, and in addition thereto investigations into all carrier made rates. We are confident that the life of the Ex Parte 148 orders will not continue that long, and we seriously doubt if any stockholder of any railroad stock would live long enough to see the termination of investigations into each and every freight rate now in existence.

We also submit that so long as the railroads are enjoying the benefits of the "passenger support factor" included in various freight rates, the passenger revenues need not even be self supporting for the railroads to enjoy the revenues required to enable them to render adequate and efficient transportation service.

EFFECT OF THE ORDER ON THE NATIONAL STABILIZATION PROGRAM

Section 15a, U. S. C. A., Title 49, provides in part, that:

"The Commission shall give due consideration, among other factors, to the effect of rates on the movement of traffic by the carrier or carriers for which the rates are prescribed; *to the need, in the public interest, of adequate and efficient railway transportation service at the lowest costs consistent with the furnishing of such service;* * * *" (Emphasis supplied.)

We are living today in an era of controlled economy. The butcher, the baker, and the munition maker, all have their profits controlled. It is immaterial whether it be under a system of "price ceilings" or under the "renegotiation of contracts," the ultimate results are the same. It makes little difference whether it is the laborer working under the "little steel formula" or the landlord whose rents are frozen. It may be the "white collar worker" or the wife and child of G. I. Joe. Never before in all history has the need of the public of efficient railway transportation service at the lowest costs consistent with the furnishing of such service been greater. We think that the emphasized provisions above quoted of the Interstate Commerce Act imposes on the Commission the duty to regulate the railroad fares pursuant to the policy of the national stabilization program.

In conclusion, we state that the record in this case shows conclusively that the intrastate fares were highly profitable that the railroads could continue to function as contemplated by the Interstate Commerce Act at the intrastate fare level; that in

no case coming to our knowledge has any utility, during the present wartime emergency, been permitted to increase an admittedly profitable rate thirty-three and one-third percent. We well remember the public repercussion after World War I, arising from wartime profiteering and the "costs plus ten" contracts. If the cost plus ten contracts were considered as wartime profiteering, what can an admittedly profitable fare plus thirty-three and one-third per cent additional profit be considered?

No one disputes that it is the duty of the Interstate Commerce Commission, in its authority to prescribe rates, to allow the railroads revenue sufficient to enable the carriers, under honest, economical, and efficient management, to provide adequate and efficient railway transportation service. However, it is fundamental that if the freight rates include a factor to support past passenger deficits and this factor has been multiplied time and time again by increased volume, this support factor plays entirely too important a part in the "necessary revenues" of the carriers to permit it being ignored in determining the revenues that should be produced by passenger traffic.

This case presents the identical inquiries as presented in the case of *Wisconsin v. C. B. & Q. R. R.*, 257 U. S. 563, in addition to the question of what consideration the Commission should have given the National Stabilization Program, namely:

First. Do the intrastate passenger fares work undue prejudice against persons in interstate commerce so as to justify a horizontal increase of them all?

Second. Are the intrastate fares an undue discrimination against interstate commerce as a whole which it is the duty of the Commission to remove?

In both the Wisconsin case and in *New York v. United States*, 257 U. S. 591, this Court held that evidence, almost identical as presented in the case at bar, was insufficient to support a Thirteenth Section order on the grounds of prejudice against persons or localities.

The carriers, it appears, seek uniformity in their fares. In connection with this, in the Wisconsin case, supra, this Court said:

> "If, in view of the changes, made by federal authority in a large class of discriminating state rates, it is necessary from a state point of view to change nondiscriminating state rates to harmonize with them, only the state authorities can produce such harmony. We cannot sustain the sweep of the order in this case on the showing of discrimination against persons or places alone." (at p. 580)

In both the Wisconsin and the New York cases, the railroads were entitled to "costs of operation" plus "a five and one-half per cent return on the value of their properties and a one-half per cent for improvements." The intrastate rates did not produce their pro rata share of this income. Therefore, the revenues of the carriers and interstate commerce were subjected to a burden.

We are most fortunate to be able to present actual results of railway operations when both interstate and intrastate fares were on the basis of 1.65 cents per mile. We respectfully call attention to the transcript of the Alabama Public Service Commission's investigation into the reasonableness of the sought increase, commencing at page 886 of the Record in this case, which discloses the result of the railroads' passenger operations after the impact of wartime conditions, prior to the increase from 1.65 to 2.2 basic increase on interstate commerce. We, therefore, have an accurate picture of the revenues the railroads may expect for the "duration." Using the carriers' own figures, it does not matter whether the revenue is determined before or after income taxes, or for that matter, before or after "excess profits taxes," nor does it matter whether or not the freight rate "passenger support factor" is considered. The evidence in this case conclusively proves that the 1.65 basic fare, on both interstate and intrastate commerce, was producing, and will continue to produce, sufficient revenue to maintain an adequate transportation system. The only question

that remains is whether or not the railroads shall be permitted to take advantage of a wartime crisis to demand unprecedented profits. We think not.

Respectfully submitted,
WILLIAM N. MCQUEEN,
Acting Attorney General,

FORMAN SMITH,
Assistant Attorney General.

CERTIFICATE OF SERVICE.

I hereby certify that I have served a copy of the foregoing brief and argument on counsel of record by depositing a copy of the same, postage prepaid and properly addressed, in the United States Mail, to each of the following:

Hon. E. A. Smith, Illinois Central System, 135 East 11th Place, Chicago 5, Illinois; Hon. W. L. Grubbs, Louisville & Nashville R. R. Co., Louisville 1, Kentucky; Hon. Y. D. Lott, Jr., Gulf, Mobile & Ohio R. R. Co., Mobile 5, Alabama; Hon. F. W. Gwathmey, 1110 Shoreham Building, Washington 5, D. C.; Hon. Charles Clark, Southern Railway Office Building, 15th and K Streets, N. W., Washington 13, D. C.; Hon. Eli H. Brown, United States Attorney, Washington, D. C.; Hon. Robert L. Pierce, Special Assistant to the Attorney General, Washington, D. C.; Hon. Allen B. Crenshaw, Interstate Commerce Commission, Washington, D. C.; Hon. M. D.

Miller, Federal Office Building, No. 1, Washington, D. C.; Hon. E. D. Mohr, Louisville & Nashville R. R. Co., Louisville, Kentucky; Hon. Leon Jourolmon, Jr., Tennessee Railroad and Public Utilities Commission, Nashville, Tennessee; Hon. Eldon S. Dummit, Attorney General, Frankfort, Kentucky; Hon. M. B. Hollifield, Assistant Attorney General, Frankfort, Kentucky; Hon. J. E. Marks, 411 East High Street, Lexington, Kentucky.

This the 28th day of March, 1945.

WILLIAM N. MCQUEEN,
Acting Attorney General.
OF COUNSEL.

Dated at Montgomery, Ala.,
March 28, 1945.

APPENDIX A

Section 13 (4) of the Interstate Commerce Act, U. S. C. A., Title 49.

"§ 13, par. (4) Duty of commission where State regulations result in discrimination. Whenever in any such investigation the commission, after full hearing, finds that any such rate, fare, charge, classification, regulation, or practice causes any undue or unreasonable advantage, preference, or prejudice, as between persons or localities in intrastate commerce on the one hand and interstate or foreign commerce on the other hand, or any undue, unreasonable, or unjust discrimination against interstate or foreign commerce, which is forbidden and declared to be unlawful it shall prescribe the rate, fare, or charge, or the maximum or minimum, or maximum and minimum, thereafter to be charged, and the classification, regulation, or practice thereafter to be observed, in such manner as, in its judgment, will remove such advantage, preference, prejudice, or discrimination. Such rates, fares, charges, classifications, regulations, and practices shall be observed while in effect by the carriers parties to such proceeding affected thereby, the law of any State or the decision or order of any State authority to the contrary notwithstanding."

"15a. Fair return for carriers; disposition of excess; loans and leases to carriers. - * * * *

"(2) Rates to permit carriers to earn fair return. In the exercise of its power to prescribe just and reasonable rates the commission shall initiate, modify, establish or adjust such rates so that carriers as a whole in each of such rate groups or territories as the commission may from time to time designate) will, under honest, efficient and economical management and reasonable expenditures for maintenance of way, structures and equipment, earn an aggregate annual net railway operating income equal, as nearly as may be, to a fair return upon the aggregate value of the railway property of such carriers held for and used in the service of transportation: Provided, That the commission shall have reasonable latitude to modify or adjust any particular rate which it may find to be unjust or unreasonable, and to prescribe rates for different portions of the country.

"(3) Determination of percentage constituting fair return. The Commission shall from time to time determine and make public what percentage of such aggregate property value constitutes a fair return thereon; and such percentage shall be uniform for all rate groups or territories which may be designated by the commission. In making such determination it shall give due consideration, among other things, to the transportation needs of the country and the necessity (under honest, efficient and economical management of existing transportation facilities) of enlarging such facilities in order to provide the people of the United States with adequate transportation.

"(4) Determination of aggregate value of properties. For the purposes of this section, such aggregate value of the property of the carriers shall be determined by the commission from time to time and as often as may be necessary. The commission may utilize the results of its investigation under section 19a of this chapter, in so far as deemed by it available, and shall give due consideration to all the elements of value recognized by the law of the land for rate-making purposes, and shall give to the property investment account of the carriers only that consideration which under such law it is entitled to in establishing values for rate-making purposes. Whenever pursuant to section 19a of this chapter the value of the railway property of any carrier held for and used in the service of transportation has been finally ascertained, the value so ascertained shall be deemed by the commission to be the value thereof for the purpose of determining such aggregate value."

"§ 15. Determination of rates, routes, etc.; routing of trafic; disclosures, etc.—Commission empowered to determine and prescribe rates, classifications, etc.

"(1) Whenever, after full hearing, upon a complaint made as provided in section 13 of this chapter, or after full hearing under an order for investigation and hearing made by the commission on its own initiative, either in extension of any pending complaint or without any complaint whatever, the

commission shall be of opinion that any individual or joint rate, fare, or charge whatsoever demanded, charged, or collected by any common carrier or carriers subject to this chapter for the transportation of persons or property, as defined in the first section of this chapter, or that any individual or joint classification, regulation, or practice whatsoever of such carrier or carriers subject to the provisions of this chapter, is or will be unjust or unreasonable or unjustly discriminatory or unduly preferential or prejudicial, or otherwise in violation of any of the provisions of this chapter, the commission is authorized and empowered to determine and prescribe what will be the just and reasonable individual or joint rate, fare, or charge, or rates, fares, or charges, to be thereafter observed in such case, or the maximum or minimum, or maximum and minimum, to be charged, and what individual or joint classification, regulation, or practice is or will be just, fair, and reasonable, to be thereafter followed, and to make an order that the carrier or carriers shall cease and desist from such violation to the extent to which the commission finds that the same does or will exist, and shall not hereafter publish, demand, or collect any rate, fare, or charge for such transportation other than the rate, fare, or charge so prescribed, or in excess of the maximum or less than the minimum so prescribed, as the case may be, and shall adopt the classification and shall conform to and observe the regulation of practice so prescribed."

"§ 15a. Fair return for carriers.

"(1) When used in this section, the term 'rates' means rates, fares, and charges, and all classifications, regulations, and practices relating thereto.

"(2) In the exercise of its power to prescribe just and reasonable rates the Commission shall give due consideration, among other factors, to the effect of rates on the movement of traffic by the carrier or carriers for which the rates are prescribed; to the need, in the public interest, of adequate and efficient railway transportation service at the lowest cost consistent with the furnishing of such service; and to the need of revenues sufficient to enable the carriers, under honest, economical, and efficient management to provide such service. Feb. 4, 1887, c. 104, Part I, § 15a, as added Feb. 28, 1920, c. 91, § 422, 41 Stat. 488 and amended June 16, 1933, c. 91, Title II, § 205, 48 Stat. 220; Sept. 18, 1940, c. 722, Title I, § 10(e), 54 Stat. 912."

FILE COPY

Office - Supreme Court, U. S.
FILED
MAR 31 1945
CHARLES ELMORE CROPLEY
CLERK

NUMBER 574

In the Supreme Court of the United States

OCTOBER TERM, 1944

THE STATE OF ALABAMA AND PUBLIC SERVICE COMMISSION, THE STATE OF TENNESSEE AND THE RAILROAD AND PUBLIC UTILITIES COMMISSION OF THE STATE OF TENNESSEE, COMMONWEALTH OF KENTUCKY AND RAILROAD COMMISSION OF KENTUCKY,
APPELLANTS

vs.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION AND FRED M. VINSON, ECONOMIC STABILIZATION DIRECTOR, BY CHESTER BOWLES, PRICE ADMINISTRATOR, ET AL., APPELLEES

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF KENTUCKY

BRIEF ON BEHALF OF THE APPELLANTS, STATE OF TENNESSEE AND THE RAILROAD AND PUBLIC UTILITIES COMMISSION OF THE STATE OF TENNESSEE

LEON JOUROLMON, JR.,
Attorney for Appellants.
123 Memorial Building,
Nashville 3, Tenn.

SUBJECT INDEX

	Pages
OPINIONS BELOW	1-2
JURISDICTION	2
QUESTION PRESENTED	2-3
STATUTES INVOLVED	3
STATEMENT OF THE CASE	3-36
The Pleadings	3-18
Substance of the Complaint	3-13
Substance of the Answer of the United States	13
Substance of the Answer of the Interstate Commerce Commission	13-17
Substance of the Answer of Tennessee Railroads, Intervening Defendants	17-18
The Important Evidence	18-29
1. Tennessee carriers petition I. C. C. to remove discrimination in intrastate coach fares	18
2. Coach fares established at 1.5 cents per mile	19
3. Increase of interstate fares to 2.2 cents per mile	19
4. Tennessee Commission refuses intrastate increase to 2.2 cents	19-20
5. Possible evasion of interstate fares	20-21
6. Lack of evidence of undue preference to persons or localities in intrastate commerce or undue prejudice to persons or localities in interstate commerce	21
7. Evidence that service conditions in intrastate transportation in Tennessee are on the average inferior to service conditions in interstate transportation	21-22
8. Evidence of revenue needs of the carriers	22-24
9. Lack of evidence of any revenue burden upon interstate commerce	24-29
The Alabama and Kentucky Records	29-30
Opinion of the District Court	30-36
Appeal to this Court	36
SPECIFICATIONS OF ASSIGNED ERRORS	36-39
SUMMARY OF ARGUMENT	40-42
ARGUMENT	43-88
I. The authority of the Interstate Commerce Commission in respect to intrastate rates rests upon the constitutional power of the Congress, extending to interstate carriers as instruments of interstate commerce to require that these agencies shall not be used in such manner as to cripple, retard, or destroy that commerce	43-46

Pages

II. The present case represents an effort to extend the authority of the Interstate Commerce Commission in respect to intrastate commerce to those cases where there is no crippling, retarding, or hindering of interstate commerce, nor any revenue burden upon it, but where a sole and simple disparity between interstate and intrastate rate levels prevails 46-48

III. The present case differs from all former Section 13 cases before this Court because it is the first in which the carriers could make no clear and convincing showing of inadequate earnings 48-55

IV. Unable to show that under present circumstances they require increasing earnings, the carriers now urge that they need show only (1) that the rates differ, and (2) that if increased the intrastate rates would produce substantial increased revenues 55-59

V. The record in this case shows conclusively that southern rail carriers are earning at excessively high rates of return before payment of federal income and excess profit taxes 59-60

VI. Rates of return after payment of federal taxes are also greatly in excess of a fair return. 60-63

VII. Passenger operating ratios are lower than at any time in history and passenger traffic, both interstate and intrastate, is today contributing a larger proportion of rail profits than is freight traffic 63-64

VIII. The unit cost of passenger traffic in coaches is far less than the interstate fares, thus demonstrating that if all fares, intrastate and interstate, were on the intrastate level, the carriers would still be deriving an adequate return 64-66

IX. In the absence of evidence of any need on the part of carriers for increased revenues the order of the Interstate Commerce Commission was an unconstitutional usurpation of the power of the States, in contravention of the Tenth Amendment of the Constitution of the United States 66-71

X. The evidence of record establishes that the standards of through service on the railroads, predominantly interstate, are of superior quality to the standards of local service, predominantly intrastate, and that intrastate passenger transportation in Tennessee, on the average, is of an inferior grade to the service offered interstate passengers, on the average 71-81

XI. There is no evidence in the record justifying the Commission in finding that the interstate fares are just and reasonable, such a finding being a necessary prerequisite to action under Section 13 (4) 81-84

XII. The effect of the action of the Interstate Commerce Commission is not beneficial to the national economy, inasmuch as it is an administrative nullification of a justified regulatory procedure, in the insulated chambers afforded by the several States, without a proper regard for the rightful concern of local interests in local transportation facilities 85-88

CONCLUSION 89

APPENDICES

APPENDIX A—INTERSTATE COMMERCE ACT, Sections 13(4) and 15a(2) 91-92

APPENDIX B—FINDINGS OF FACT OF THE INTERSTATE COMMERCE COMMISSION, DOCKET NO. 28963, ALABAMA INTRASTATE FARES, MARCH 25, 1944 93-95

APPENDIX C—FINDINGS OF FACT AND CONCLUSIONS OF LAW OF THE DISTRICT COURT, ENTERED AUGUST 3, 1944 96-99

Findings of Fact 96-98

Conclusions of Law 99

APPENDIX D—DISSENTING OPINION OF COMMISSIONER SPLAWN IN DOCKET NO. 28963, ALABAMA INTRASTATE FARES, MARCH 25, 1944 100-109

INDEX OF CASES CITED

Pages

Alabama vs. *United States*, 279 U. S. 229 (1929) 45
Alabama et al. vs. *United States of America et al.*, 56 F. Supp. 478 (1944) 1
Alabama Intrastate Fares, 258 I. C. C. 133 1, 14
Arizona Grocery Company vs. *Atchison, Topeka & Santa Fe Ry. Co.*, 284 U. S. 370, 52 S. Ct. 183, 76 L. ed. 348 (1932) 83
Baltimore & Ohio R. Co. vs. *Interstate Commerce Commission*, 211 U. S. 612 (1911) 44
City of Yonkers vs. *U. S. of America*, 88 L. ed., 241, 320 U. S. 685, 64 S. Ct. 377 (1944) 87
Commonwealth of Kentucky vs. *United States*, 3 F. Supp. 778 (1933) 52
Detroit vs. *Michigan Public Service Commission*, 308 Mich., 706, 14 N. W. (2d), 784, 785 (1944) 62
Fifteen Per Cent Case, 1931, 178 I. C. C. 539, 179 I. C. C. 215 49
Florida vs. *United States*, 282 U. S. 194, 75 L. ed. 291 (1931) 45, 47, 53, 56
Florida vs. *United States*, 292 U. S. 1 (1934) 45, 58
Gibbons vs. *Ogden*, 9 Wheat, 1 (1824) 43
Houston E. & W. T. R. Co. vs. *U. S.*, 234 U. S. 342 (1914) 43, 68
Increases in Intrastate Freight Rates, 186 I. C. C. 615 49, 52, 50
Increased Railway Rates, Fares, and Charges, 1942, 248 I. C. C. 545 7, 8, 15, 19, 33, 38, 81, 82, 83, 84
New York vs. *United States*, 257 U. S. 591 (1922) 40, 58
Panhandle Eastern Pipeline Co. vs. *Fed. Pow. Com.*, 143 F. 2d 488 63
Passenger Fares and Charges for Intrastate Traffic in Georgia, 214 I. C. C. 567 40
Passenger Fares and Surcharges, 214 I. C. C. 174 7, 15, 19, 82
Schechter Poultry Corp. vs. *U. S.*, 295 U. S. 495, 1935 43
South American Rate Order (F. C. C.), report dated June 2, 1943 63
Southern Railway Co. vs. *United States*, 222 U. S. 20 (1911) 44
Truax vs. *Corrigan*, 257 U. S. 312, 344, 42 Sup. Ct. 124, 66 L. ed. 254, 268 (1921) 86
United States vs. *State of Louisiana*, 290 U. S. 70, 78 L. ed. 181 (1933) 49, 50
Utah Edible Livestock Rates and Charges, 206 I. C. C. 309 47
Washington Gas Light Co., 46 P. U. R. (N. S.) 1, 11 63
Wisconsin R. Comm. vs. *Chicago B. & Q. R. Co.* (1922), 257 U. S. 563 40, 44, 69

INDEX OF CONSTITUTIONAL PROVISIONS CITED

Constitution of the United States, Commerce Clause, Article 1, Section 8 7, 30, 43

Pages

Constitution of the United States, Tenth Amendment . . 7, 12, 31, 32, 42, 66, 70, 89

Constitution of the United States, Fourteenth Amendment 85, 86

INDEX OF STATUTES AND PRESIDENTIAL ORDERS CITED

Emergency Price Control Act of 1942, U. S. Code, Title 50, Section 901 . . . . . 6, 11, 31, 36

Excess Profits Tax Act of 1942 11

Executive Order of the President No. 9250 6

Executive Order of the President No. 9328 . . . . . 6, 11

Interstate Commerce Act, U. S. Code, Title 49, Section 13(4) 3, 5, 14, 18, 31, 32, 40, 44, 45, 48, 51, 58, 67, 68, 70, 89

Interstate Commerce Act, U. S. Code, Title 49, Section 15a(2) 3, 31, 32, 59

Stabilization Act of 1942, U. S. Code, Title 50, Section 961 . . . . . 6, 11, 31, 36

Urgent Deficiencies Act, U. S. Code, Title 28, Sections 43-48 . . 2, 3, 4

INDEX OF TREATISE CITED

Frankfurter: *Mr. Justice Holmes and the Supreme Court*, Harvard University Press, Cambridge, 1938 86

In the Supreme Court of the United States

OCTOBER TERM, 1944

NUMBER 574

THE STATE OF ALABAMA AND PUBLIC SERVICE COMMISSION, THE STATE OF TENNESSEE AND THE RAILROAD AND PUBLIC UTILITIES COMMISSION OF THE STATE OF TENNESSEE, COMMONWEALTH OF KENTUCKY AND RAILROAD COMMISSION OF KENTUCKY, APPELLANTS

vs.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION AND FRED M. VINSON, ECONOMIC STABILIZATION DIRECTOR, BY CHESTER BOWLES, PRICE ADMINISTRATOR, ET AL., APPELLEES

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF KENTUCKY

BRIEF ON BEHALF OF THE APPELLANTS, STATE OF TENNESSEE AND THE RAILROAD AND PUBLIC UTILITIES COMMISSION OF THE STATE OF TENNESSEE

OPINIONS BELOW

The opinion of the Three-Judge United States District Court for the Western District of Kentucky (R. 1345-1362), which is here under review, is reported in 56 F. Supp. 478. The report of the Interstate Commerce Commission, under the style of *Alabama Intrastate Fares* is reported in 258 I. C. C. 133 (R. 4). The case of *Tennessee Intrastate Fares*

is treated of by the Interstate Commerce Commission in the same report, and disposed of therein.

JURISDICTION

The jurisdiction of this Court is invoked under the United States Code, Title 28, Sections 43 and 45-48, inclusive, and particularly Section 47a. (Act of March 3, 1911, Chapter 231, Section 210, 36 Statutes, 1150; October 22, 1913, Chapter 32, 38 Statutes 220.)

The decree of the United States District Court for the Western District of Kentucky was entered on August 3, 1944 (R. 1362). A petition for appeal to this Court was presented to the District Court and was allowed September 1, 1944 (R. 1373). The record of the District Court was forwarded to this Court on September 25, 1944, and the case was filed October 9, 1944. Probable jurisdiction was noted by this Court on November 13, 1944, at which time this Court also noted probable jurisdiction in No. 592, *Vinson et al.* vs. *United States et al.*, which relates to the same opinion and decree of the Court below. (R. 1393-1394.)

QUESTION PRESENTED

Whether the action of the Interstate Commerce Commission in requiring the railroads operating within the states of Alabama, Tennessee, and Kentucky to increase the intrastate coach fares in said states, contravenes the Tenth Amendment of the Constitution of the United States, inasmuch as the finding of said Commission that the intrastate fares imposed by authority of the respective states have

caused or will cause an undue, unreasonable or unjust discrimination against interstate or foreign commerce is not sustained by the evidence of record, there being no evidence of any burden upon interstate commerce nor any finding of the Commission of the amount of additional revenues from intrastate rates required to enable the carriers to adequately and sufficiently meet the nation's transportation needs.

STATUTES INVOLVED

The following sections of the Interstate Commerce Act are set forth in Appendix A, infra, pages 91 to 92:

Section 13 (4) of the Interstate Commerce Act, United States Code, Title 49.

Section 15a (2) of the Interstate Commerce Act, United States Code, Title 49.

STATEMENT OF THE CASE

THE PLEADINGS

SUBSTANCE OF THE COMPLAINT

The State of Tennessee and the Railroad and Public Utilities Commission of the State of Tennessee on the tenth day of June, 1944, filed complaint in the District Court of the United States for the Western District of Kentucky under the Urgent Deficiencies Act (28 U. S. Code 43-48) to enjoin and set aside an order of the Interstate Commerce Commission entered May 8, 1944, and corrected May 24, 1944, under the terms of which railroads serving the State of Tennessee, and three other states—viz.: Alabama, Kentucky, and North Carolina—were required to establish and maintain intrastate passen-

ger fares on a basis not lower than the interstate fares for like service, and recited in substance the following:

1. That the State of Tennessee is one of the sovereign states of the United States and the Railroad and Public Utilities Commission has general jurisdiction over the rates and fares charged by rail carriers engaged in intrastate commerce in the State of Tennessee. (R. 1.)

2. That the United States is made a party defendant under the provisions of the Urgent Deficiencies Act aforesaid and because the Interstate Commerce Commission claims to have derived its authority for the unconstitutional and illegal acts committed by it from the United States; that the Interstate Commerce Commission is a regulatory body having jurisdiction over rail carriers engaged in interstate commerce, and jurisdiction under strictly defined constitutional and statutory limitation over rail carriers engaged in intrastate commerce. (R. 2.)

3. That the Interstate Commerce Commission on October 13, 1944, instituted an investigation known as Docket No. 29037, *Tennessee Intrastate Fares*, to determine whether Tennessee intrastate passenger fares constitute any undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce on the one hand and interstate or foreign commerce on the other, or any undue, unreasonable or unjust discrimination against interstate or foreign commerce. (R. 2-3.)

4. That said investigation was instituted pursuant to a petition filed with the Interstate Com-

merce Commission by sixteen railroads operating within the State of Tennessee, charging violation of Sections 3 and 13, Title 49 of the United States Code, known as the Interstate Commerce Act, upon which hearing was held by the Interstate Commerce Commission on December 2-3, 1943, and the matter was argued before the Interstate Commerce Commission in Washington, D. C., on February 18, 1944. (R. 3.)

5. That while all railroads operating in Tennessee filed the petition on which the investigation was instituted the proceedings were primarily and almost exclusively for the use and advantage of the four major railroads, these being the Nashville, Chattanooga and St. Louis Railway; Louisville and Nashville Railroad Company; Southern Railway Company; and the Cincinnati, New Orleans and Texas Pacific Railway Company; which four carriers would receive 99.38 per cent of the aggregate increase in passenger revenues to be derived by all Tennessee carriers if the increases permitted by the Interstate Commerce Commission are allowed. (R. 3-5.)

6. That the Interstate Commerce Commission published its findings and conclusions on March 25, 1944, upon which the Railroad and Public Utilities Commission filed a petition for rehearing and reconsideration, which petition being denied, final order was entered in the case dated May 8, 1944, in which final order the Interstate Commerce Commission set aside and declared null and void the existing fares for transportation of coach passengers in intrastate commerce prescribed by the Railroad and Public Utilities Commission of the

State of Tennessee to be charged by railroads operating within the State of Tennessee. (R. 5.)

7. Prior to the proceedings before the Interstate Commerce Commission the carriers had filed tariffs with the Railroad and Public Utilities Commission of the State of Tennessee, increasing the rates for intrastate coach passengers in Tennessee, which tariffs had been suspended and a full hearing conducted by the Commission, on the completion of which the Tennessee Commission on August 30, 1943, entered its findings and order that the carriers had presented no evidence which would justify the increases sought by them and the existing fares should be maintained as just and reasonable. (R. 6.)

8. That the action there taken by the Railroad and Public Utilities Commission was in conformity to the Price Stabilization Program embodied in the Emergency Price Control Act of 1942 (Public Law 421, Seventy-Seventh Congress), and the Act of October 2, 1942 (Public Law 729, Seventy-Seventh Congress), and in obedience and according to Executive Orders of the President of the United States, Number 9250, dated October 3, 1942, and Number 9328, dated April 8, 1943. (R. 6-7.)

9. That the effect of the order of the Interstate Commerce Commission is to raise passenger coach fares between Tennessee intrastate points from 1.65 cents per mile one way to 2.2 cents per mile one way and from 1.485 cents per mile round trip to 1.98 cents per mile round trip, thus increasing the fares prescribed by the Tennessee Commission by 33 1/3 per cent and requiring intrastate passengers to pay $550,000 per annum in the aggregate in increased cost of transportation. Before February

10, 1942, interstate and intrastate fares were 1.5 cents per mile one way and 1.35 cents round trip, but on that date these fares were increased 10 per cent pursuant to action of the Interstate Commerce Commission in Ex Parte 148, *Increased Railway Rates, Fares, and Charges, 1942*, 248 I. C. C. 545, and at the same time a 10 per cent increase in intrastate fares was permitted by the Tennessee Commission. On October 1, 1942, the Interstate Commerce Commission increased interstate fares in the southern states to 2.2 cents per mile one way and 1.98 cents per mile round trip. (R. 7-8.)

10. That the order of the Interstate Commerce Commission dated May 8, 1944, exceeds the powers granted to the Federal Government in the Commerce Clause, Article 1, Section 8, of the Constitution of the United States and constitutes an unwarranted and wholly unjustified invasion of the sovereignty of the State of Tennessee in violation of the Fifth and Tenth Amendments of the Constitution of the United States, there being no facts before the Commission justifying its report, findings, and order. (R. 8.)

11. That the finding of the Commission that a basic interstate coach fare of 2 cents per mile plus an additional 10 per cent is reasonable is not supported by the evidence; that in the hearing held by the Commission in Docket No. 29037 the Commission received no evidence purporting to show that the interstate coach fare of 2.2 cents per mile has been found by the Commission to be a reasonable fare in interstate commerce; that in Docket No. 26550, *Passenger Fares and Surcharges*, 214 I. C. C. 174, the Commission determined that basic inter-

state coach fares of 1.5 cents per mile in the southern region were not unreasonable or otherwise unlawful for application throughout the South; that on July 14, 1942, the southern railroads filed petition in said Docket No. 26550, seeking authority to increase southern coach fares to 2.2 cents per mile, which petition was denied by the Interstate Commerce Commission on August 1, 1942, but at the same time the Commission authorized southern carriers by modification of the former orders in Ex Parte 148 to apply the increase of 10 per cent approved in said order to the basic fare of 2 cents per mile for the said southern carriers. In the petition filed in Ex Parte 148 no relief was prayed by the carriers for an increase from 1.5 cents to 2.2 cents per mile, the only relief prayed for being for a uniform increase of 10 per cent in all fares, as a result of which the increase of fares in the South to 2.2 cents per mile is illegal, null and void. (R. 9-11.)

12. That the finding of the Commission to the effect that the interstate fares are reasonable was made without due process of law, inasmuch as the Interstate Commerce Commission in modifying its original order in Ex Parte 148 so as to permit southern carriers to apply the 10 per cent increase there granted to a basic fare of 2 cents per mile, thus allowing a 46.66 per cent increase instead of a 10 per cent increase was in violation of the cooperative agreement between the Interstate Commerce Commission and the several state commissions; said procedure was made without pleadings on the part of the carriers, without proof to support same, and with no opportunity on the part of the protesting parties

to resist, whence the order is illegal and erroneous and made without due process of law. (R. 11-12.)

13. That the finding of the Interstate Commerce Commission that the conditions affecting transportation of coach passengers within Tennessee intrastate are substantially similar to those interstate is directly contrary to the evidence, which undisputedly shows that there is a substantial difference in the service accorded interstate passengers and that accorded intrastate passengers within the State of Tennessee, the intrastate service on the average being distinctly inferior to the interstate service. (R. 12.)

14. That the specific findings of the Commission that interstate passengers and intrastate passengers travel in the same trains and in the same cars, but that interstate passengers are required to pay higher fares than intrastate passengers to the undue and unreasonable advantage and preference of the intrastate passengers and the undue and unreasonable prejudice of the interstate passengers is wholly at variance with the facts of record; the undisputed record shows that all trains operated by respondents in Tennessee are not available to interstate and intrastate passengers alike and that the de luxe trains, having the highest grade of service and facilities, make only one stop within the state and carry only interstate passengers; that there is also no evidence in the record that the difference in interstate and intrastate fares constitutes a source of undue disadvantage to any one person or of undue advantage to any other person; and that the railroads are not seeking relief for particular persons or places, but on the contrary seek and were granted by the Com-

mission an order of state-wide application. (R. 13-15.)

15. That the finding of the Commission that revenues of the carriers under the intrastate fares are less by $525,000 than they would be if those fares were increased to the level of the interstate fares, and that the traffic moving under the intrastate fares does not contribute its fair share of the revenues required to enable the carriers to render adequate and efficient service is unsupported by the evidence of record; that the evidence in the record is that traffic moving under intrastate fares in Tennessee does contribute its fair share of the revenues required to enable the carriers to render adequate and efficient service; that for the year ending September 30, 1943, the four railway companies which benefit from the order of the Commission increasing their fares earned at a rate of return (before federal income taxes) ranging from a low of 12.4 to a high of 17.2 per cent; that the carriers in 1943 earned in excess of a fair return; that their present earnings are at even higher levels; and that they do not need the revenues from the increase of intrastate fares to enable them to earn a fair return; that per car earnings for 1942 and 1943 reflect a large increase over those of prior years, so that the record in this case clearly proves that the revenues required by Tennessee carriers to defray the expense of rendering adequate and efficient transportation service is presently 1.22 cents or less per passenger mile for coach passengers as compared with the intrastate fare of 1.65 cents per mile. (R. 15-18.)

16. That the finding of the Commission to the

effect that the maintenance of lower intrastate fares in Tennessee than the corresponding interstate fares causes undue and unreasonable advantage to and preference of persons in intrastate commerce, undue and unreasonable disadvantage to and prejudice against persons in interstate commerce, and undue, unreasonable, and unjust discrimination against interstate commerce is an erroneous finding inasmuch as there is no evidence in the record to support same. (R. 18-19.)

17. That the Interstate Commerce Commission erred in its failure to make proper findings relative to the Wartime Stabilization Program and to give proper effect to the policy set forth in the Emergency Price Control Act of 1942, 50 U. S. C. A. App. 901, and the Stabilization Act of October 2, 1942, 50 U. S. C. A. App. 961 et seq.; and to Executive Order No. 9328 of the President of the United States; that the Railroad and Public Utilities Commission of the State of Tennessee was obedient to the statutes enacted and to the order of the President in refusing to allow intrastate increases in coach fares, in the absence of any showing by the railroads that there was a necessity for such an adjustment. (R. 19-20.)

18. That the findings of the Interstate Commerce Commission are erroneous inasmuch as they fail to reflect that the record shows undisputably that Tennessee railroads are earning excess profits in contravention of the legislative pronouncement of national policy embodied in the Excess Profits Tax Act of 1942; that the record indicates that the excess profits derived by the existence of a state of war by

the Tennessee railroads amounts to more than $30,000,000 annually. (R. 20-21.)

19. That the Interstate Commerce Commission erred in basing its increase of intrastate fares upon the showing made in the record that the movement of troop trains had increased the cost of transportation; the record undisputedly shows that all movement of troop trains is interstate in nature and such increases in the cost of interstate traffic do not properly support a finding that intrastate travel fails to produce its fair share of the earnings required by the carriers to enable them to provide adequate service. (R. 21-24.)

20. That the finding of the Interstate Commerce Commission that the Tennessee intrastate fares are lower than the corresponding interstate coach fares in the southern region is inadequate and insufficient in and of itself to support the order of the Commission, as the mere existence of a disparity between fares does not justify the Commission in finding that a discrimination exists. (R. 24.)

21. That if the order of the Interstate Commerce Commission is allowed to remain in effect the lawful powers of the State of Tennessee, reserved to it under the Tenth Amendment of the Constitution of the United States, will be destroyed, nullified and subverted, and likewise coach passengers will suffer irreparable loss and damage inasmuch as they would have no adequate means of recovering from the Tennessee railroads the increases in transportation charges, amounting to more than $550,000 annually. (R. 24-25.)

22. The foregoing averments were followed by appropriate prayers for injunctive relief restraining

and inhibiting the United States and the Interstate Commerce Commission from enforcing and executing said order of the Commission. (R. 25-26.)

SUBSTANCE OF THE ANSWER OF THE UNITED STATES

On July 7, 1944, the defendant United States filed answer to the complaint, in substance, as follows:

Inasmuch as Fred M. Vinson, Economic Stabilization Director, by Chester Bowles, Price Administrator, seeks to intervene as plaintiff and the Interstate Commerce Commission is a party defendant in these proceedings, and a situation is presented in which two government agencies on opposite sides of the proceedings will have an opportunity through their respective counsel to present their position, the United States has determined to remain neutral in the proceedings in the District Court without prejudice to any position which it may desire to take on appeal.

The United States neither admits nor denies the allegations of the complaint. (R. 420-421.)

SUBSTANCE OF THE ANSWER OF THE INTERSTATE COMMERCE COMMISSION

On July 10, 1944, the Interstate Commerce Commission filed its answer to the complaint, in substance, as follows:

1. The Commission admits Court jurisdiction of the action and the parties. (R. 422.)

2. The Commission admits that the plaintiffs have a legal right to maintain the action and that intervenors are proper parties. (R. 422.)

3. The Commission alleges that proceedings were instituted by it upon the filing of petition in July, 1943, by the various Tennessee rail carriers, which petition complains that intrastate coach passenger fares within the State of Tennessee were unduly preferential of intrastate passengers and unduly prejudicial to interstate passengers, and unjustly discriminatory against interstate commerce in violation of Section 13 (3) and (4) of the Interstate Commerce Act, and seeking to have such preference, prejudice or discrimination removed; that said petitions were docketed under Docket No. 29037 and hearings were held thereon, briefs were filed and arguments were heard by the Commission as to all matters involved in said proceedings, and the Commission entered its report of March 25, 1944; thereafter petition was filed for reargument and reconsideration of the report which petition was denied; thereafter rail carriers were ordered to establish passenger fares for intrastate transportation in Tennessee and also in the states of Alabama, North Carolina, and Kentucky, on a basis no lower than the passenger fares presently applicable interstate. The report of the Commission of March 25, 1944, is published in 258 I. C. C. 133 and recites the history of rail fares in Southern Passenger Association territory, and the former decisions and orders of the Commission relative thereto; prior to June 10, 1918, passenger fares were 2.5 cents per mile, and on said date the fare was raised to 3 cents per mile which remained in effect until August 25, 1920, when fares generally were raised to 3.6 cents per mile; during 1932 and 1933 certain southern rail carriers experimented with lower fares, establishing fares of 1.5

cents per mile; on February 28, 1936, the Commission concluded its investigation of passenger fares and in its report in *Passenger Fares and Surcharges*, 214 I. C. C. 174, prescribed maximum reasonable fares of 2 cents per mile, one way and round trip in coaches, throughout the country and found that the existing experimental fares of 1.5 cents per mile in southern territory were not unreasonable or otherwise unlawful; on November 15, 1935, the carriers maintaining the 1.5 cents per mile fares increased these fares to 2 cents per mile, but restored the 1.5-cent fare on January 15, 1939, with certain other southern lines continuing to maintain the 2-cent fare basis. In Ex Parte 148, *Increased Railway Rates, Fares, and Charges, 1942*, 248 I. C. C. 545, the Commission on petition of the carriers authorized a 10 per cent increase in passenger fares; under said order the passenger coach fares of 1.5 cents per mile in the South became 1.65 cents, and fares of 2 cents became 2.2 cents, with round-trip fares modified accordingly; on August 1, 1942, on petition of southern rail carriers the Commission authorized them to increase the lower interstate passenger fares in coaches to 2.2 cents per mile to become effective October 1, 1942; several southern states approved similar increases for intrastate application, but the regulatory Commissions of Alabama, North Carolina, Tennessee, and Kentucky declined to authorize such increases; the refusal of these four states to authorize increases was the basis of the petition of southern rail carriers in the instant proceedings asking that the disparity between interstate and intrastate fares be removed. The report of the Commission was based upon the following findings, in substance, as

follows: (1) that the interstate fares are reasonable, (2) that the intrastate fares complained of are more than the corresponding interstate fares, (3) that conditions affecting the transportation of coach passengers intrastate are similar to those interstate, (4) that interstate passengers travel in the same trains and cars with intrastate passengers, but pay higher fares to the undue and unreasonable advantage and preference of intrastate passengers, and undue and unreasonable disadvantage and prejudice of interstate passengers, (5) that Tennessee rail carriers' revenues are less by $525,000 annually than they would be if the intrastate fares were increased to the interstate level, and that traffic moving under the lower intrastate fares is not contributing its fair share of revenues required to enable the railroads to render adequate and efficient transportation service, and (6) that the maintenance of the lower intrastate fares causes unreasonable advantage and preference to intrastate passengers, undue and unreasonable advantage and prejudice against interstate passengers, and undue, unreasonable, and unjust discrimination against interstate commerce. (R. 422-427.) (Full text of said findings is set out in Appendix B hereafter, pages 93 to 95.)

4. The Commission alleges that the findings in said report are supported and justified by the evidence and that the Commission considered all facts, circumstances, and conditions called to its attention by the respective parties; that the report was not made arbitrarily or unjustly or without proof or contrary to the relevant evidence, nor did the Commission exceed the authority conferred upon it by

law; the Commission expressly denies the truth of all allegations in conflict with the allegations of the answer or with the findings in said report dated March 25, 1944. (R. 427.)

5. The Commission specifically denies the allegations of the complaint as follows: Of paragraph XII to the effect that the Commission disregarded the cooperative procedure agreed upon by and between the Federal Commission and the State Commissions; of paragraph XIX to the effect that the Interstate Commerce Commission based its action upon the added expense of operation of the railroads due to their movement of troop trains, all of which, is interstate in nature, so that such increases in cost of interstate traffic should not properly be used to support a finding that intrastate traffic does not produce its fair share of the earnings required by the railroads to enable them to provide adequate and efficient service; of paragraph XX, the allegation that the findings of a disparity between intrastate and interstate coach fares is inadequate in and of itself alone to sustain the order of the Commission; and of paragraph XXI, the allegation that the power of the State of Tennessee to regulate the rates for intrastate transportation of passengers is destroyed, nullified and subverted, in contravention of the Tenth Amendment to the Constitution of the United States, by the order of the Commission. (R. 427.)

SUBSTANCE OF THE ANSWER OF TENNESSEE RAILROADS, INTERVENING DEFENDANTS

On July 12, 1944, the Tennessee railroads filed their answer, in substance, as follows:

1. The defendants adopt and rely upon the answer of the Interstate Commerce Commission. (R. 428.)

2. These defendants specifically deny the averments in paragraphs X to XXI, inclusive, of the complaint, all of which paragraphs have to do with specific averments as to the inadequacy of the findings and evidence before the Interstate Commerce Commission in the issuance of its report. (R. 428.)

THE IMPORTANT EVIDENCE

1. *Tennessee carriers petition I. C. C. to remove discrimination in intrastate coach fares:* By a petition in the nature of a complaint, bearing date of September 8, 1943, the railroads operating in Tennessee sought an order from the Interstate Commerce Commission under Section 13 of the Interstate Commerce Act to declare certain rates prescribed by the Railroad and Public Utilities Commission of the State of Tennessee for the intrastate transportation of passengers within the State of Tennessee discriminatory, prejudicial, unjust, and unlawful and as creating an undue burden upon interstate commerce; and to remove such alleged advantage, preference, and prejudice as between persons and localities in intrastate commerce, on the one hand, and interstate commerce, on the other hand, as may exist by reason of such rates prescribed by said Tennessee Commission. The principal rates which are challenged by this proceeding are those for the intrastate transportation of coach passengers which are charged 1.65 cents per mile, as compared with the fare of 2.2 cents per mile in interstate commerce. (R. 433-439.)

2. *Coach fares established at 1.5 cents per mile:* Prior to October 1, 1942, the interstate coach fare was 1.65 cents. The basic coach fare of 1.5 cents per mile in the South was approved by the Commission on February 28, 1936, in its decision in Docket Number 26550, *Passenger Fares and Surcharges*, 214 I. C. C. 174. A 10 per cent increase, bringing the fare to 1.65 cents per mile, was published by the carriers under authority of an order of the Interstate Commerce Commission dated January 21, 1942, confirmed by the decision in Ex Parte 148, *Increased Railway Rates, Fares, and Charges, 1942*, 248 I. C. C. 545. The Tennessee intrastate fare was increased to the 1.65-cent level on or about February 10, 1942. (R. 71-72.)

3. *Increase of interstate fares to 2.2 cents per mile:* The railroads in Southern Passenger Association territory on July 14, 1942, filed petition praying modification of the order in Docket No. 26550, seeking authority to increase southern coach fares to 2.2 cents per mile. By order dated August 1, 1942, the Commission stated that the petition was denied; but in fact granted the prayer of the petition by issuance of an order in Ex Parte 148, modifying the former order in Ex Parte 148 so as to authorize southern carriers "to apply the increase of 10 per cent approved in said order to a basic fare of 2 cents per mile on the lines of said petitioners." The southern carriers increased the fares to 2.2 cents per mile effective October 1, 1942. (R. 982-983.)

4. *Tennessee Commission refuses intrastate increase to 2.2 cents:* On or about October 12, 1942, the Tennessee railroads petitioned the Tennessee Rail-

road and Public Utilities Commission for authority to increase intrastate coach fares to the interstate level. By its order of August 30, 1943, the Tennessee Commission in Docket No. 2535 issued its report and interlocutory order, in which it declined to authorize the proposed increase in coach fares. (R. 49; 439.)

In its decision the Tennessee Commission exercised the sovereign power of that State, delegated to it by the legislature of the State, in determining that the proposed rates will be unreasonable for intrastate application. The action of the Tennessee Commission has not been appealed for review to any of the courts of that State having jurisdiction to review orders of the Commission.

5. *Possible evasion of interstate fares:* In order to establish the existence of discrimination against interstate passengers, the carriers introduced exhibits designed to show possible evasion of interstate fares by purchase of intrastate tickets to the nearest state-line station, and rebuying or paying cash fares on trains to interstate destinations. As an example, it would be possible for a passenger to travel from Nashville, Tennessee, to Woodland Mills, Tennessee, on an intrastate ticket and purchase an interstate ticket from Woodland Mills, Tennessee, to Hickman, Kentucky. The through interstate fare from Nashville, Tennessee, to Hickman, Kentucky, is $3.78, whereas the combined fares on the Nashville to Woodland Mills combination would be $2.91, and the reduction in interstate fare would be 87 cents. No evidence was introduced that any such evasion had actually taken place and no particular instance

of such evasion was cited. (R. 91; 333; 337; 210; 358-359.)

Evidence was also introduced proving the obvious fact that for travel over like distances, the higher interstate fares result in greater charges than do the lower intrastate fares. (R. 91; 335-336; 338; 210; 360.)

6. *Lack of evidence of undue preference to persons or localities in intrastate commerce or undue prejudice to persons or localities in interstate commerce:* No evidence was introduced that any persons or localities had complained that the Tennessee intrastate fares caused them any undue prejudice or disadvantage. No evidence was introduced that any persons or localities in interstate commerce had sustained any economic injury or injury of any sort by the charging of any Tennessee intrastate fare. (R. 186.)

7. *Evidence that service conditions in intrastate transportation in Tennessee are on the average inferior to service conditions in interstate transportation:* It was shown that 38.54 per cent of the service rendered on the main track mileage in Tennessee of the Nashville, Chattanooga & St. Louis Railway, identified as a typical Tennessee carrier, consisted of local service, almost wholly intrastate, in which passenger service consists of a coach attached to a freight train which habitually runs late, which operates at a speed of ten to twelve miles per hour, and which coach is equipped with primitive and unsanitary toilet facilities, open vestibules, and is ordinarily unclean. (R. 251; 362; 235-244.)

In comparison with this it was shown that four de luxe streamlined trains operate through the State

of Tennessee, carrying interstate passengers only and making stops within the State of Tennessee only to take on or discharge passengers from or to out-of-state points, these trains being equipped with de luxe reclining reserved seat coaches, completely air conditioned, having private dining car service, observation cars, and in some cases are serviced by stewardesses and registered nurses. They operate through the state at an average speed of 44.6 to 51 miles per hour. (R. 312; 367-371; 260-267.)

It is also shown that trains are being operated into and through Tennessee with crowded passenger conditions and a large number of passengers are having to stand. The evidence shows that long-haul passengers, most of whom are interstate, have the opportunity to obtain and preempt the seats as passengers get on and off, whereas local passengers, predominantly intrastate, do not have such frequent opportunities to obtain seats and furnish the larger proportion of standees. (R. 228-230.)

8. *Evidence of revenue needs of the carriers:* The railroads introduced testimony relative to increased expenses of passenger operations within recent years and months. The general items of increased expense listed by the carriers were occasioned as follows: (1) the increased amount of passenger traffic; (2) the large number of troop trains and troop cars which require priority in handling and occasion delays and added expense in both passenger and freight transportation; (3) the cost of modernizing passenger equipment through air conditioning; and (4) the mountainous conditions in certain parts of Tennessee which require helper service and addi-

tional locomotives in order to carry through trains. (R. 86-89; 105-108.)

The record shows that all of the troop movements within the State of Tennessee are interstate in character and the additional expense thereof is incidental to interstate transportation. (R. 285.)

The mountainous section referred to which requires helper service is on the Nashville, Chattanooga and St. Louis Railway at Cowan, Tennessee, which lies between Nashville and Chattanooga near the Alabama-Tennessee state line. The service consists of a mountain engine, engineer, fireman, and conductor; the helper service is used only for through trains from Chicago to Florida, and such trains cannot and do not carry intrastate passengers over the mountain, there being no scheduled stop between the mountain and the Tennessee state line on any such through trains with one exception. It would be possible in the case of an emergency involving severe illness or death for such a train to stop at Sherwood, Tennessee, and thus discharge an intrastate passenger, but this is the only possibility of intrastate service benefiting from the helper service described. The local trains which stop at all local stations do not use the helper service. (R. 380; 115-117; 267.)

All of the items of increased expense as claimed by the carriers are for expenses which are predominantly interstate in character. (R. 286-287.)

In addition the railroads presented statistical exhibits intended to show that they are entitled to receive excessively high revenues at the present because of low general earnings since 1921, and in order to recoup for passenger deficits prior to 1942.

All of said statistical exhibits were objected to, but such objections were overruled and the Commission took into account the contention made by the carriers, and recited the depression passenger deficits in its report. (R. 141; 343; 345; 352-353; 355; 126-129; 137-138.)

9. *Lack of evidence of any revenue burden upon interstate commerce:* All parties to these proceedings admitted the disparity between interstate and intrastate coach passenger fares. This disparity amounted to the difference between 1.65 cents per mile one-way fare, intrastate, and 2.2 cents per mile one-way fare, interstate, with corresponding disparities in round-trip transportation.

As a corollary to the above it is also conceded by all parties that the intrastate rates based on a mileage fare of 1.65 cents would produce less revenues than if based on a mileage fare of 2.2 cents. The amount of this disparity in revenues is calculated by the carriers, and accepted by the State and its Commission, to be $556,280 in Tennessee on an annual basis. This aggregate is made up as follows:

Nashville, Chattanooga and St. Louis Railway	$240,215
Southern Railway Company	183,925
Louisville & Nashville Railroad	115,718
Cincinnati, New Orleans & Texas Pacific Railroad	12,972
Carolina, Clinchfield & Ohio Railway	2,058
Illinois Central Railroad	856
Gulf, Mobile & Ohio Railroad	536
Total	$556,280

(R. 141; 341.)

In the record the carriers refer to this as a "loss in intrastate revenues" and rely upon it as the sole evidence in the record to sustain the necessary finding that traffic moving under the lower intrastate

fares is not contributing its fair share of the revenues required to enable the carriers to render adequate and efficient transportation service. (R. 122; 38.)

The record also demonstrates that for the year ending September 30, 1943, the rate of return, before federal income taxes, of the four railway companies which are the prime beneficiaries of the increased rates ordered by the Interstate Commerce Commission on their investment in railway property used in transportation service, plus cash, materials, and supplies was as follows:

Cincinnati, New Orleans & Texas Pacific Railroad	17.2%
Southern Railway Company	15.1%
Louisville & Nashville Railroad	15.7%
Nashville, Chattanooga & St. Louis Railway	12.4%

(R. 323-24; 414.)

On the same basis the total rate of return for all of the eight carriers for which information was available, this including all seven of the carriers which will participate in the increase of revenues if the rate increase is permitted to stand, was 12.8 per cent. (R. 323-324; 414.)

During the year ending September 30, 1943, the carriers operating in Tennessee earned in excess of a fair return, their present earnings are at an even higher level, and they do not need the revenues from the increase of intrastate fares in order to enable them to earn a fair return. (R. 322-323.)

The revenues derived from passenger traffic have become very profitable in the period since 1941. Since that time both the average number of passenger cars in each passenger train and the average number of passengers in each passenger car on the

major railroads operating in Tennessee have shown an increase. The number of passenger cars per train has increased in 1942 over 1941 for the Southern Railway by 20 per cent; for the Louisville & Nashville Railroad by 11 per cent; for the Tennessee Central by 36 per cent; for the Nashville, Chattanooga & St. Louis Railway by 10 per cent; and for the Cincinnati, New Orleans & Texas Pacific Railway by 3 per cent. The average number of passengers in each passenger car has increased for the same period as follows: Cincinnati, New Orleans & Texas Pacific Railway, 102 per cent; Southern Railway, 71 per cent; Louisville & Nashville Railroad, 71 per cent; Tennessee Central Railway, 140 per cent; Nashville, Chattanooga & St. Louis Railway, 87 per cent. (R. 312; 365.)

The increase in carloadings has resulted in a large increase in per car earnings (passenger traffic) for 1942 over those of 1941. The average revenue per passenger car mile in cents has increased as follows: for the Cincinnati, New Orleans & Texas Pacific Railway, from 25 cents to 45 cents, or an increase of 85 per cent; for the Southern Railway, from 29 cents to 46 cents, or an increase of 56 per cent; for the Louisville & Nashville Railroad, from 22 cents to 37 cents, or an increase of 65 per cent; for the Illinois Central, from 23 cents to 34 cents, or an increase of 44 per cent; for the Tennessee Central Railway, from 11 cents to 25 cents, or an increase of 116 per cent; and for the Nashville, Chattanooga & St. Louis Railway, from 21 cents to 37 cents, or an increase of 76 per cent. (R. 312; 365.)

The evidence also shows that this same trend of increase was projected into the first nine months of

1943, although the detailed figures for the separate railroads were not available. The record shows that for the entire southern region the first eight months of 1943 reflect a similar increase over 1942 as follows: the average revenue per passenger car mile in the southern region increased from 46 cents to 55 cents, or a 19 per cent increase. (R. 312; 366.)

The uncontroverted evidence in the record shows that the intrastate fare of 1.65 cents per mile exceeds by 35 per cent the fares required to enable respondents to render adequate and efficient transportation service. The expense of transportation in coaches in Tennessee was at the time of the hearing 1.22 cents per passenger mile or less, as compared with the intrastate fare of 1.65 cents per mile. Said requirements for the year 1942 may be calculated from evidence filed by the carriers as follows:

Revenues per coach mile (R. 141; 349)	48.36 cents
Multiplied by passenger operating ratio (R. 141; 346)	.72
Expense per coach mile	34.819 cents
Divided by passenger miles per coach mile (R. 141; 356)	28.51
Expenses per passenger mile	1.22 cents

Application of this same formula to the four Tennessee railroads which are the principal beneficiaries of this proceeding shows that even less revenues are required by these four roads in order to enable them to defray the expense of transportation. The table is as follows:

Railroads	Revenues Per Coach Mile (R. 141; 349)	Passenger Operating Ratio (R. 141; 346)	Expense Per Coach Mile	Divided by Passenger Mile Per Coach Mile (R. 141; 358)	Expense Per Passenger Mile
Southern Railway	57.89c	.57	32.99c	36.19	.91c
Louisville & Nashville Railroad	43.72c	.72	31.47c	27.71	1.13c
Cincinnati, New Orleans & Texas Pacific Railway	51.85c	.62	32.14c	31.65	1.01c
Nashville, Chattanooga & St. Louis Railway	50.17c	.70	35.11c	32.59	1.07c

Every indication in the record is that these unit cost figures, based upon the experience of the year 1942, are too high rather than too low when applied to the operating results of 1943. At the time of the hearing the latest operating figures available were for September, 1943, but the estimated passenger service operating ratios for 1943 were at that time as follows: Cincinnati, New Orleans & Texas Pacific Railway, 52.8 per cent; Southern Railway, 47.1 per cent; Louisville & Nashville Railroad, 52.5 per cent; Nashville, Chattanooga & St. Louis Railway, 58.9 per cent; and for the aggregate of all eight Tennessee railroads, 56 per cent. (R. 323-324; 411.) At the same time a comparison of passenger revenues for the nine elapsed months of 1943 with those of the calendar year of 1942 reflected large percentage increases, ranging with the various major carriers from 14 per cent to 46 per cent. (R. 312; 364.) Likewise the revenue per passenger car mile was showing an increase of more than 18 per cent over 1942. (R. 312; 366.)

Revenue passenger miles per car mile increased in 1943 on the Southern Railway from 25.25 to 31.89; on the Louisville & Nashville from 21.11 to

33.83; on the Cincinnati, New Orleans & Texas Pacific from 27.56 to 29.83; and on the Nashville, Chattanooga & St. Louis Railway from 25.16 to 34.86. (R. 312; 356.)

The distinct tendency that the increase in revenue passenger miles per car mile would have to reduce unit costs leads to the inescapable inference that the cost per mile in coaches throughout 1943 on each of the major Tennessee carriers was considerably less than one cent per mile.

Accordingly, a second computation of unit costs per coach passenger mile for all Class I railroads in the southern district for the year 1943 is estimated on the following basis: expense per coach car mile, 27.68 cents; divided by coach passenger miles per coach car mile, 41, produces the expense per coach passenger mile of .68 cent. (R. 501.)

THE ALABAMA AND KENTUCKY RECORDS

Simultaneously with the filing of complaint by the State of Tennessee and its regulatory commission, companion suits were filed by the State of Alabama and the Commonwealth of Kentucky, and their respective Commissions. The complaints in each of these companion cases were similar, though not identical, with that filed in the Tennessee case. (R. 506-513; 1047-1061.) Similar answers to those filed in the Tennessee case were filed by the defendants United States and Interstate Commerce Commission and the intervening railroad companies of the respective States. (R. 532-533; 533-540; 540-541; 1125-1126; 1128-1134; 1136-1137.) Likewise similar evidence was introduced in these cases, respec-

tively, and similar, though not identical, exhibits. (R. 547-1046A; 1140-1340.)

The three suits were thereupon on June 20, 1944, consolidated for hearing before a Three-Judge District Court convened pursuant to Section 47, Title 28, of the United States Code. (R. 419.)

OPINION OF THE DISTRICT COURT

On August 3, 1944, the Special District Court for the Western District of Kentucky rendered its opinion, holding that the injunction prayed for in the consolidated cases should be denied and the proceedings dismissed, and on the same date by appropriate decree dismissed the action. (R. 1345-1362; 1362-1363.)

The Court recited the history of passenger fares in the southern region, and the proceedings before the Interstate Commerce Commission and the respective State Commissions relative thereto, this recitation of the history of the fares being virtually as set out hereinabove. (R. 1346-1350.) After setting out the six specific findings of the Interstate Commerce Commission in full, the Court recited the facts relative to the filing of the three actions in the United States District Court for the Western District of Kentucky, describing the complaints as follows:

> The complaints after stating the foregoing facts in detail allege that the corrected order of the Interstate Commerce Commission of May 8, 1944, constitutes an unwarranted and unjustified invasion of the sovereignty of the State in that it exceeds the powers granted to the Federal Congress by the Commerce Clause of

Section 8 of Article 1 of the Constitution of the United States; that said order contravenes the Fifth and Tenth Amendments of said Constitution; that there was no evidence before the Commission to support the report, findings, and order made by it; that the corrected order of May 8, 1944, is in contravention of the Stabilization Program of the Federal Government as embodied in the Emergency Price Control Act of 1942 and its amendment of October 2, 1942; and that unless said order is set aside and annulled innumerable citizens in the respective States will suffer irreparable injury and damage in the form of excessive passenger fares in intrastate transportation and the respective State Commissions will be deprived of their rights to regulate intrastate commerce and intrastate passenger fares on railroads operating in said States. (R. 1351.)

The opinion also sets out in substance the intervening petitions filed by Fred M. Vinson, director of the Office of Economic Stabilization, through Chester Bowles, price administrator of the Office of Price Administration, and the pleadings and answers filed by the United States, the Interstate Commerce Commission, and the carriers of the respective States. (R. 1352.)

The opinion sets out the substance of the statutory provisions, Sections 13 and 15 of the Interstate Commerce Act (Title 29, United States Code), Section 13 relating to undue or unreasonable advantage, preference or prejudice as between persons or localities in intrastate commerce on the one hand and interstate commerce on the other hand, or undue, unreasonable, or unjust discrimination against interstate commerce. The opinion recites the following:

> The State Commissions recognize the constitutionality of this legislation, which has been many times upheld, but they contend and rightly so, that the power of the Commission to fix intrastate rates is limited to the two situations (1) where the evidence shows a preference as between persons or localities in intrastate commerce on the one hand and interstate commerce on the other hand, and (2) where the evidence shows any unreasonable or unjust discrimination against interstate commerce. Any attempt on the part of the Interstate Commerce Commission to regulate intrastate rates where one of these two situations does not exist would be in conflict with the Tenth Amendment to the United States Constitution. (R. 1353.)

The Court also stated that it recognized the dovetail relationship between the purpose of Section 15 of the Act and the authority of the Commission under Section 13 (4) of the Act to remove undue or unjust discrimination against interstate commerce, this dovetail relationship arising from the requirement that intrastate traffic should pay a fair proportionate share of the cost of maintaining an adequate railway system. (R. 1354.) The Court also discussed the province of the Court in reviewing the findings of administrative bodies, and recognized the well-established principle that the Court may not substitute its discretion and opinion for that of the administrative body. (R. 1354-1355.)

The Court stated that the validity of the Commission's order rests primarily upon the basic fact that the interstate coach fares are just and reasonable. It based its finding that the interstate coach fares are just and reasonable upon the series of hearings conducted by the Interstate Commerce Com-

mission in Ex Parte 148, *Increased Railway Rates, Fares, and Charges, 1942*, 248 I. C. C. 545, in which proceedings the carriers operating in Southern Passenger Association territory were authorized and empowered to raise their fares from 1.65 cents per mile to 2.2 cents per mile in coaches. (R. 1355-1357.)

The petitioners did not contest the second finding of the Commission, but the Court made the grievous error of stating that the fifth finding of the Commission appears not to be seriously contested by the petitioners. (R. 1357.) On the contrary, the fifth finding of the Commission is the most vigorously contested by all the petitioners, and these appeals rest almost wholly upon the fact that this finding of the Commission was erroneous. The fifth finding of the Commission consists of two completely separate and unrelated findings joined with the conjunction "and." It is as follows:

> Respondents' revenues under the lower intrastate fares are less by at least $725,000 per annum in Alabama, $500,000 in Kentucky, $525,000 in North Carolina, and $525,000 in Tennessee than they would be if those fares were increased to the level of the corresponding interstate fares, and *traffic moving under these lower intrastate fares is not contributing its fair share of the revenues required to enable respondents to render adequate and efficient transportation service.* (Appendix B, herein, page 94; italics supplied.)

The second clause of this finding is strongly contested by all petitioners who insist that the uncontroverted evidence is that traffic moving under these lower intrastate fares *is* contributing its fair share

of revenues required to enable respondents to render adequate and efficient transportation service. (R. 15-18; 511; 1059.)

The third and fourth findings of the Commission are to the effect that the conditions affecting intrastate transportation on the one hand and interstate transportation on the other are substantially similar. The Court holds that this finding is supported by substantial evidence, despite the fact that in some instances the streamlined de luxe trains, which offer a much higher standard of service to the traveling public than regular trains, in certain instances make but one regular stop within a state, which prevents transportation of intrastate passengers in that state. The Court holds that due to the relative insignificance of this type of transportation this fact can be largely disregarded in making the "general findings" referred to. The second part of the fourth finding holds that intrastate passengers receive an undue preference and interstate passengers suffer an undue and unreasonable disadvantage and prejudice. The Court states that this finding "may or may not be sufficiently supported by the evidence." In effect the Court thus refuses to support this finding by the Commission, thus eliminating the issue of preference to intrastate passengers or prejudice against interstate passengers. (R. 1358.)

The Court discussed the Commission's sixth finding, which is that the lower intrastate coach fares cause undue, unreasonable, and unjust discrimination against interstate commerce. This finding relates back to the part of the fifth finding to the effect that traffic moving under the lower intrastate fares does not contribute its fair share of the reve-

nues required to enable the railroads to render adequate service. The opinion of the Court, however, does not recognize this relationship. The Court, after describing the conditions of passenger traffic on the railroads in the four states, makes the following statement:

> Under such conditions the effect of maintaining a materially lower rate intrastate than the reasonable interstate rate necessarily results in intrastate traffic failing to pay a fair proportionate share of the cost, maintenance, and operation, and is discriminatory against interstate traffic. (R. 1358-1359.)

The foregoing quotation completely begs the question as to whether there was an actual revenue burden upon interstate commerce from the intrastate fares. It was urged by all petitioners that the passenger fares on the basis of 1.65 cents per mile were adequate under present-day conditions of traffic (1) to provide the railroads with a reasonable rate of return, and (2) to provide the carriers with far in excess of the expense necessary to enable the carriers to provide adequate and efficient transportation service. In its discussion of this finding the Court in effect conceded these facts, saying:

> Petitioners contend that existing rates yield sufficient revenue to constitute a reasonable return to the carriers, that the additional revenue from raising the intrastate rates is not necessary, and that the resulting total revenue will be materially more than the carriers are legally entitled to receive. That may be the result, at least temporarily. But the proposed increased rates are not based on the need for additional revenue. The proposed increase is for the pur-

pose of removing an unjust discrimination against interstate commerce which the Commission is empowered to do regardless of resulting increased revenues or the non-existence of any need for the same. (R. 1359.)

In the final section of the opinion the Court disposed of the contentions relative to the failure of the Interstate Commerce Commission to accommodate the exercise of its power to the Congressional policies embraced in the Emergency Price Control Act of 1942 and the Stabilization Act of October 2, 1942. The Court held that the Commission had properly given consideration to the policies inherent in these statutes, and had given the Price Administrator the opportunity to be heard which is provided by these statutes. (R. 1360-1361.)

APPEAL TO THIS COURT

On September 1, 1944, the several parties filed their petitions praying that they be permitted to prosecute an appeal to the Supreme Court of the United States, and on the same day the Special District Court entered its order allowing and permitting said appeal. (R. 1365-1366; 1373-1374.)

SPECIFICATION OF ASSIGNED ERRORS

The Appellants, State of Tennessee and Railroad and Public Utilities Commission of the State of Tennessee, specify the following errors heretofore assigned, which they urge as sufficient grounds for reversing the decree of the District Court and setting aside the order of the Interstate Commerce Commission:

1. The District Court erred as a matter of law in refusing to enjoin, set aside, and annul the order of the Interstate Commerce Commission on the ground that said order was not based on adequate findings by the Commission supported by substantial evidence before the Commission. (Error II; R. 1367.)

2. The Court erred in holding as a conclusion of law that the Interstate Commerce Commission is empowered to remove unjust discrimination against interstate commerce by increasing intrastate fares "regardless of resulting increased revenues or the nonexistence of any need for the same." (Error XVII; R. 1370.)

3. The Court erred in declining to set aside, annul, and enjoin said order of the Interstate Commerce Commission because for the first time in the history of railroading, so far as we are advised, said order of the Commission permitted and directed an increase of revenue to the carriers when there was shown no revenue necessity therefor and, on the contrary, it appeared from all the testimony that such increase only increased the already excessive profits of the railroads on such operation. (Error XX; R. 1371.)

4. The Court erred in finding as a fact that "the second and fifth findings of the Commission appear not to be seriously contested by the petitioners, and in any event are fully sustained by the evidence." (Error XIII; R. 1369.)

5. The Court erred in declining to set aside, annul, and enjoin the order of the Interstate Commerce Commission on the ground that the Commission had no power to order increases in the in-

trastate coach fares of Alabama, Kentucky, and Tennessee in order to compensate for passenger service deficits incurred during prior years, which deficits were in fact compensated by a support factor in freight rates. (Error XXII; R. 1371.)

6. The Court erred in finding as a fact that the findings and order of the Interstate Commerce Commission in *Increased Railway Rates, Fares and Charges, 1942*, 248 I. C. C. 545, commonly referred to as Ex Parte 148, "supplemented with current statistical data and the evidence of increased operating costs largely attributable to wartime conditions," was sufficient evidence to sustain the Commission's first finding of facts—namely, that the interstate coach fares to, from, and through the states of Alabama, Kentucky, and Tennessee are just and reasonable. (Error XII; R. 1369.)

7. The Court erred in finding as a fact that "a review of the record discloses substantial evidence to support these findings"—namely, those portions of the third and fourth findings of the Commission, wherein the Commission found that the conditions affecting the transportation of passengers in coaches within the three states involved, intrastate on the one hand, and interstate to, from, and through these states on the other, were substantially similar. (Error XIV; R. 1369.)

8. The Court erred in holding as a conclusion of law that "under such conditions (intermingling of interstate and intrastate passengers on same trains and in same cars) the effect of maintaining a materially lower rate intrastate than the reasonable interstate rate necessarily results in intrastate traffic failing to pay a fair proportionate share of

the cost, maintenance, and operation, and is discriminatory against interstate traffic. * * * The existence of such discrimination against interstate commerce, regardless of the nonexistence of any advantage as between persons or localities is sufficient justification for the Commission to end the disparity by ordering it removed." (Error XVI; R. 1370.)

9. The Court erred in its finding of fact No. 6, in that such finding purports to find that the findings of the Interstate Commerce Commission in its report of March 25, 1944, in Dockets Nos. 28963, Alabama Intrastate Fares; 29000, Kentucky Intrastate Fares; and 29037, Tennessee Intrastate Fares, are supported by substantial evidence. (Error VII; R. 1368.)

SUMMARY OF ARGUMENT

Virtually all of the argument in this brief is addressed to various aspects of the single proposition that the record in this case does not support, contrary to the holding of the District Court, the finding of the Commission, that "traffic moving under these lower fares is not contributing its fair share of the revenues *required* to enable respondents (the Tennessee railroads) to render adequate and efficient transportation service." (Italics supplied.) This finding is an essential prerequisite to a holding by the Commission that the intrastate fares unduly and unjustly discriminate against interstate commerce.

Of the three kinds of discrimination prohibited by Section 13(4)—namely, (1) discrimination against persons, (2) discrimination against localities, and (3) discrimination against interstate commerce—only the third is presently at issue in this case. The Commission failed to find discrimination against localities, and the District Court failed to find discrimination against persons, thus eliminating this issue under the authority of *Wisconsin R. Comm.* vs. *Chicago, B. & Q. R. Co.*, 257 U. S. 563 (1922); *New York* vs. *United States*, 257 U. S. 591 (1922); *Passenger Fares and Charges for Intrastate Traffic in Georgia*, 214 I. C. C. 567.

Accordingly, this argument relates only to unjust and undue discrimination against interstate commerce, and is presented under the following series of twelve propositions:

I. The authority of the Interstate Commerce Commission in respect to intrastate rates rests upon

the constitutional power of the Congress, extending to interstate carriers as instruments of interstate commerce, to require that these agencies shall not be used in such manner as to cripple, retard, or destroy that commerce.

II. The present case represents an effort to extend the authority of the Interstate Commerce Commission in respect to intrastate commerce to those cases where there is no crippling, retarding, or hindering of interstate commerce, nor any revenue burden upon it, but where a sole and simple disparity between interstate and intrastate rate levels prevails.

III. The present case differs from all former Section 13 cases before this Court because it is the first in which the carriers could make no clear and convincing showing of inadequate earnings.

IV. Unable to show that under present circumstances they require increased earnings, the carriers now urge that they need show only (1) that the rates differ, and (2) that if increased the intrastate rates would produce substantial increased revenues.

V. The record in this case shows conclusively that southern rail carriers are earning at excessively high rates of return before payment of federal income and excess profits taxes.

VI. Rates of return after payment of federal taxes are also greatly in excess of a fair return.

VII. Passenger operating ratios are lower than at any time in history and passenger traffic, both interstate and intrastate, is today contributing a larger proportion of rail profits than is freight traffic.

VIII. The unit cost of passenger traffic in coaches is far less than the intrastate fares, thus

demonstrating that if all fares, intrastate and interstate, were on the intrastate level, the carriers would still be deriving an adequate return.

IX. In the absence of evidence of any need on the part of carriers for increased revenues the order of the Interstate Commerce Commission was an unconstitutional usurpation of the power of the States, in contravention of the Tenth Amendment of the Constitution of the United States.

X. The evidence of record establishes that the standards of through service on the railroads, predominantly interstate, are of superior quality to the standards of local service, predominantly intrastate, and that intrastate passenger transportation in Tennessee, on the average, is of an inferior grade to the service offered interstate passengers, on the average.

XI. There is no evidence in the record justifying the Commission in finding that the interstate fares are just and reasonable, such a finding being a necessary prerequisite to action under Section 13(4).

XII. The effect of the action of the Interstate Commerce Commission is not beneficial to the national economy, inasmuch as it is an administrative nullification of a justified regulatory procedure, in the insulated chambers afforded by the several States, without a proper regard for the rightful concern of local interests in local transportation facilities.

ARGUMENT

I

The authority of the Interstate Commerce Commission in respect to intrastate rates rests upon the constitutional power of the Congress, extending to interstate carriers as instruments of interstate commerce, to require that these agencies shall not be used in such manner as to cripple, retard, or destroy that commerce.

Congress has power under Article One, Section 8, Clause 3 of the United States Constitution "to regulate commerce among the several states." This power of Congress does not apply to commerce which is purely internal, as it was held in one of the notable opinions of Chief Justice Marshall in *Gibbons* vs. *Ogden*, 9 Wheat. 1 (1824). The grant of power to Congress virtually denies power to interfere with the internal trade and business of the separate states except as a necessary and proper means of carrying into execution some other power expressly granted. There is an important exception to this general rule, which is that, although activities may be intrastate in character when separately considered, if they have such a close and substantial relationship to interstate commerce that their control is appropriate to protect that commerce from burdens and obstructions, Congress cannot be denied the power to exercise that control. This is the doctrine of the Shreveport case, *Houston, E. & W. T. R. Co.* vs. *United States*, 234 U. S. 342 (1914), and also the case of *Schechter Poultry Corp.* vs. *United States*, 295 U. S. 495 (1935).

Congress in the exercise of its paramount power may prevent the common instrumentalities of in-

terstate and intrastate commercial intercourse from being used in their intrastate operations to the injury of interstate commerce. While Congress does not possess authority to regulate the internal commerce of a state, as such, it does possess power to foster and protect interstate commerce, although in taking necessary measures so to do it may be necessary to control intrastate transactions of interstate carriers. However, this power of Congress is an authority to exercise incidental and partial control of intrastate commerce when necessary to an adequate maintenance of interstate commerce. Section 13 of the Interstate Commerce Act but implements this constitutional power of Congress.

The Interstate Commerce Commission, to which Congress has delegated the authority to regulate intrastate commerce under the incidental and limited circumstances referred to above, cannot make an order setting aside a lawful intrastate rate in the absence of a finding, based on sufficient evidentiary facts, that such rates impose a *burden upon interstate commerce*. The intrastate transactions of interstate carriers may not be regulated by the Interstate Commerce Commission except when the facts conclusively show that such regulation is necessary to foster and protect interstate commerce. Numerous opinions of this Court support this proposition, among them being:

Baltimore & Ohio R. R. Co. vs. *Interstate Commerce Commission*, 221 U. S. 612 (1911).
Southern Railway Co. vs. *United States*, 222 U. S. 20 (1911).
Wisconsin R. Com. vs. *Chicago B. & Q. R. Co.*, 257 U. S. 563 (1922).

Alabama vs. *United States*, 279 U. S. 229 (1929).
Florida vs. *United States*, 282 U. S. 194 (1931).
Florida vs. *United States*, 292 U. S. 1 (1934).

The second part of Section 13 (4) of the Interstate Commerce Act prohibits and makes unlawful any undue, unreasonable, or unjust discrimination against interstate commerce caused by rates established on the authority of the State. The clause referred to, which is set out in full in Appendix A, pages 91 and 92 hereunder, recites that whenever the Commission, after hearing, finds that any fare causes "any undue, unreasonable or unjust discrimination against interstate or foreign commerce, which is hereby forbidden and declared to be unlawful, it shall prescribe" the fare or charge thereafter to be observed, so as to remove the discrimination. This part of the section, by firmly established authority, is related to the right of the carriers to obtain a fair return on the value of the property which they have dedicated to the public service—the discrimination which is prohibited is generally given the name of "revenue discrimination." The federal power may not be exercised in the absence of a showing that the intrastate rates impose a revenue burden upon interstate commerce. In every case in which the Supreme Court of the United States has confirmed the jurisdiction of the Interstate Commerce Commission to regulate intrastate commerce there have been findings supported by substantial evidence that the earnings of the carriers were at depressed levels—this is tantamount to saying they were below the level necessary for them to enjoy a fair rate of re-

turn. This is the meaning of a revenue burden upon interstate commerce.

Upon the present record before the Interstate Commerce Commission there was no evidence to sustain a finding that any appellee railroads are at present in need of additional passenger revenues in order to enable them to adequately and efficiently serve the nation's transportation needs, and the record establishes the fact that present rail earnings are far in excess of those which would enable them to obtain a fair return.

II

The present case represents an effort to extend the authority of the Interstate Commerce Commission in respect to intrastate commerce to those cases where there is no crippling, retarding, or hindering of interstate commerce, nor any revenue burden upon it, but where a sole and simple disparity between interstate and intrastate rate levels prevails.

The instant case represents a determined effort on the part of the rail carriers to prevail upon the Interstate Commerce Commission and the Courts to relax the standards of proof which have governed the finding of a revenue burden upon interstate commerce, and by this means to extend the jurisdiction of the Commission over intrastate commerce. They were successful in persuading the Commission to find a revenue burden upon a mere showing that a disparity between interstate and intrastate fares exists, coupled with the corollary showing, conceded by all, that higher rates would produce higher revenues, amounting to some $525,000 in Tennessee, between 80 per cent and 90 per cent of which must be

passed on to the federal government as excess profits taxes.

With such ingenuity did the railroads press this point that they were able to draw an opinion from the District Court that the difference between the interstate and intrastate fares of itself "necessarily results in intrastate traffic failing to pay a fair proportionate share of the cost, maintenance, and operation and is discriminatory against interstate traffic." (R. 1358-1359.)

The conclusion of the District Court carries the argument of the railways and the Interstate Commerce Commission to its logical limits, but at the same time it is directly contrary to the express holding of this Court in *Florida* vs. *United States*, 282 U. S. 194, 212, 75 L. ed. 291, 302, in which the Court said:

> The Commission has no general authority to regulate intrastate rates and the mere existence of a disparity between particular rates on intrastate and interstate traffic does not warrant the Commission in prescribing intrastate rates. *Arkansas R. Commission* vs. *Chicago R. I. & P. R. Co.*, 274 U. S. 597, 71 L. ed. 1224, 47 S. Ct. 724, supra.

Both this Court and the Interstate Commerce Commission have formerly held that the showing of a mere disparity between interstate and intrastate rates is not sufficient to support a finding of undue, unreasonable, or unjust discrimination against interstate commerce. *Utah Edible Livestock Rates and Charges*, 206 I. C. C. 309.

If this decision of the District Court is sustained, it will bring to naught the many decisions which have held that something more than mere disparity

is essential to justify the finding of a burden against interstate commerce. It is our strong insistence that discrimination against interstate commerce is not so easily demonstrated as this. Such discrimination is related to the earnings of the carriers, through their rate of return, and likewise through the cost of rendering the service. It does not result from this that a mere showing of the fact that the rates are different warrants an order under Section 13.

III

The present case differs from all former Section 13 cases before this Court because it is the first in which the carriers could make no clear and convincing showing of inadequate earnings.

In one salient and controlling respect, the present case is one of first impression. In the many cases which have been before this Court to test the validity of Section 13 orders of the Interstate Commerce Commission, this is the first in which the Commission's order has been challenged because of an improper finding that the carriers *require the revenues* which the increased rates would provide in order to enable them to render adequate and efficient railway transportation service. In every former Section 13 case the Interstate Commerce Commission has made such a finding, or its equivalent, but such findings have never been excepted to on appeal. The reason for this is obvious; in every prior case the railroad industry was suffering under depressed conditions of traffic and earnings, and the evidence before the Commission in all former cases amply sustained that particular finding.

One striking example will be sufficient to show

that this is so. In the case of *United States* vs. *State of Louisiana*, 290 U. S. 70, 78 L. ed. 181 (1933), the Supreme Court of the United States had under review an order of the Interstate Commerce Commission in *Increases in Intrastate Freight Rates*, 186 I. C. C. 615. In the report of the Interstate Commerce Commission findings were made showing the serious revenue needs of the carriers, these findings being taken very largely from the conditions which were more explicitly shown to the Interstate Commerce Commission in Ex Parte 103, *Fifteen Per Cent Case, 1931*, 178 I. C. C. 539, 179 I. C. C. 215. In its report in *Increases in Intrastate Rates*, the Commission made the following findings:

> It was shown that the earnings of the carriers, due to great shrinkage in traffic, were grossly inadequate, that their credit was vitally impaired, and that they were confronted by a serious financial emergency.

The Commission also quoted from its decision in Ex Parte 103 as follows:

> It is motived by the thought that the distrust of railroad securities is rapidly gaining such elements of panic that a slight charge on the industries of the country best able to stand it may justifiably be imposed, through freight rates, for the purpose of increasing confidence and averting developments which might further disturb an already tremendously shaken financial situation, and to avoid impairment of an adequate system of transportation.

And following these findings the Commission went further and said:

> . . . Where an increase in the general level of rates, however, is required to sustain a rail-

road system "adequate to the needs of the country" to use the words of the Court, it is manifest that the "great purpose" of the act cannot be accomplished unless intrastate rates are dealt with in the same way as interstate rates.

The case was appealed to a three-judge court and thereafter to the Supreme Court of the United States. The record in the case was so conclusive on the basic finding that the earnings of the carriers were wholly inadequate, that this finding of the Interstate Commerce Commission was never challenged in any respect. It was accepted by the State of Louisiana, which prosecuted the appeal. An exhibit filed by the railroads in the present case shows that southern carriers in 1931 earned at a rate of return of 1.33 per cent, and in 1932 at a rate of 0.78 per cent. (R. 141; 343). Since the State was under compulsion to admit the adequacy of the evidence to sustain this finding, it was forced to rely upon a number of technical errors, and seek out such minor inaccuracies in the findings of the Commission as might be regarded by the Court as fatal. It alleged that the Interstate Commerce Commission had not found that the interstate rates are just and reasonable; it alleged that the procedure followed by the Commission in hearing the case was irregular; and it alleged that the order of the Commission in Ex Parte 103 was permissive to the carriers, and therefore could not be used as a basis for thirteenth section relief.

The Supreme Court, when it considered the appeal in *United States of America* vs. *State of Louisiana, supra,* discussed the revenue requirements of the carriers and commented as follows:

In Fifteen Per Cent Case, 1931, the Commission, after a careful survey, found itself faced with an acute emergency calling for prompt action to give temporary relief to the transportation system.

The discussion by Mr. Justice Stone of the revenue requirements essential to a Section 13 order is as follows:

> By Section 416 of the Transportation Act, Section 13 (4) Interstate Commerce Act, U. S. C. Title 49, Section 13, directly involved here, the Commission was given power to remove unjust discrimination by intrastate rates against interstate commerce by prescribing minimum intrastate rates. This Court has consistently held that this section is to be construed in the light of Section 15a (2) and as supplementing it, so that the forbidden discrimination against interstate commerce by intrastate rates includes those cases in which disparity of the latter rates operates to thwart the broad purpose of Section 15a to maintain an efficient transportation system by enabling the carriers to earn a fair return. So construed, Section 13 (4) confers on the Commission the power to raise intrastate rates so that the intrastate traffic may produce its fair share of the earnings required to meet maintenance and operating costs and to yield a fair return on the value of property devoted to the transportation service, both interstate and intrastate. *Railroad Commission* vs. *Chicago B. & Q. R. Co., supra* (257 U. S. 586, 590, 66 L. ed. 382, 384, 42 S. Ct. 232, 22 A. L. R. 1086); *New York* vs. *United States*, 257 U. S. 591, 601, 66 L. ed. 385, 391, 42 S. Ct. 239; *Florida* vs. *United States, supra* (282 U. S. 214, 75 L. ed. 303, 51 S. Ct. 119); *Louisiana* vs. *United States*, 284 U. S. 125, 131, 76 L. ed. 201,

204, 52 S. Ct. 74; see *Nashville, C. & St. L. R. Co.* vs. *Tennessee*, 262 U. S. 318, 67 L. ed. 999, 43 S. Ct. 583.

As pointed out in the reports of the Commission in this case and others (see *Re Increased Rates, 1920*, 59 Inters. Com. Rep. 290), Section 15a by its terms, commands the Commission, in providing the required revenue by increasing rates, to deal with the carriers of the nation as a whole or in broad classes, and as this Court recognized in the New England Divisions Case *(Akron C. & Y. R. Co.* vs. *United States) supra* (261 U. S. 197, 198, 67 L. ed. 612, 613, 43 S. Ct. 270), this requirement would be nullified and the administrative arm of the Commission paralyzed, if instead of adjudicating upon the rates in a large territory on evidence deemed typical of the whole rate structure, it were obliged to consider the reasonableness of each individual rate before carrying into effect the necessary increased schedule.

The case of *Commonwealth of Kentucky* vs. *United States*, 3 F. Supp. 778 (1933), is also an appeal from the decision of the Interstate Commerce Commission in *Increases in Intrastate Freight Rates*, 186 I. C. C. 615. Issues arising out of the Fifteen Per Cent Case were also in controversy here, but the question was not raised as to whether the carriers earning less than 1½ per cent had need of additional revenue. The Commonwealth of Kentucky did not challenge the finding of the Commission that increased revenues were required to support the national transportation system. Instead it had to rely upon other exceptions and these again were a number of technical objections to various findings of the Commission.

Still another example is the case of *State of Florida* vs. *United States*, 282 U. S. 194 (1931). In this case the Interstate Commerce Commission found that the carriers involved were in need of additional revenues from intrastate rates in order to enable them to enjoy adequate and sufficient earnings, but it failed to make a finding that the increase in intrastate fares would produce additional earnings to the carriers.

On such a record the State of Florida, appealing to the Supreme Court of the United States, did not question the finding that the carriers needed additional revenues, but it did challenge the failure of the Commission to find that the increased intrastate rates would produce additional revenues. This Court struck down the order of the Interstate Commerce Commission because of its failure to make the technical findings that the revenues would be increased if the intrastate rates were raised to the interstate level. *A priori* we contend that the Supreme Court would have stricken down the order of the Interstate Commerce Commission if the State of Florida had been able to show that the finding that the carriers needed additional revenues was made in the teeth of evidence clearly showing that the carriers were enjoying adequate and sufficient revenues, and earning at the rates of return of 1943-44 instead of 1930-31.

Every decision of the Supreme Court of the United States bearing upon the thirteenth section of the Interstate Commerce Act, prior to those made under conditions of 1942, 1943, and 1944, must be distinguished from the present case because of the simple and uncontrovertible fact that there is no

former period during the memory of the present generation when a finding of the Interstate Commerce Commission that the carriers required additional revenues in order to enable them to adequately and sufficiently meet the transportation needs of the country could have been controverted.

The present record shows that during 1942 and 1943 railroad earnings were phenomenal. They were unparalleled in either peacetimes or war, in periods of depression or of prosperity. The failure of the railroads of Tennessee to receive the additional revenues from the increase of intrastate coach fares will in no material way impair the financial strength of these railroads or their ability to render adequate service during the war. The railroads will retain without the increases huge and truly extraordinary profits. Their financial condition is so much better than it has ever been that any talk of endangering the financial strength of the railroads must be disregarded. Typical of this prosperity is the 1942 report of the president of the Southern Railway to its stockholders, in which the following statements were made:

> With a somewhat larger non-operating income than in 1941, and with smaller fixed charges, there was after charges a net income of $33,388,868 for the year 1942. These earnings constituted an increase of $14,018,974 over net income for 1941; and of $9,792,146 over 1926, the previous high year since the company's organization. Fixed charges were covered 3.13 times and, after deducting dividends on the preferred stock, earnings amounted to $23.41 per share of common stock. (R. 312; 390.)

During 1942, 1943, and 1944 we had three years

of actual war experience in rail transportation. Any emergency that anyone may have feared growing out of the war has not materialized so far as revenue needs of the carriers are concerned. As the country mobilized its industry railroad revenues rose rapidly. In addition war measures tended to reduce operating costs so that 1942 and 1943 brought the lowest operating ratios in history. Even more phenomenal was the great drop in passenger operating ratios experienced in 1943, when the increase in passenger traffic under crowded rail conditions for the first time in the history of American railroading brought the passenger operating ratios below the freight operating ratios.

IV

Unable to show that under present circumstances they require increased earnings, the carriers now urge that they need show only (1) that the rates differ, and (2) that if increased the intrastate rates would produce substantial increased revenues.

In this proceeding the Interstate Commerce Commission was called upon to decide whether the intrastate rates prescribed by Tennessee are an actual burden upon interstate commerce. The question is immediately posed, What is meant by a burden upon interstate commerce? Does it mean that the railroads simply cannot derive as much gross revenues as they would if the interstate rate level prevailed? This seems to be the Commission's conception of what is required to show a revenue burden upon interstate commerce; with meticulous care the Interstate Commerce Commission made a finding that the increased intrastate fares would result in increased gross revenues for the carriers in Tennessee

of $525,000. But this does not satisfy the full meaning of the phrase "burden upon interstate commerce." The full meaning of this phrase comprehends also the proposition that if the railroads do not gain these increased gross revenues of $525,000 their need for them must be so great that they must by some means get them out of interstate passengers.

Wherein do the present record and the findings based on the record establish the burden upon interstate commerce? If the railroads had first shown the revenue needs, and next shown the expectation of getting more revenue by the higher intrastate fares, the Commission would have been called upon to determine whether the burden on interstate commerce would actually follow upon the failure to allow increased fares. But there was no evidence upon which the Commission could found the first of these findings; accordingly the determinations were not made. The bald statement of the conclusion by the Interstate Commerce Commission is of itself insufficient. Before the Commission can set aside the State's order, and override the presumption of its correctness, it must on a clear, conclusive record of evidentiary facts make the necessary findings: (1) the carriers are in need of the additional revenues; (2) the carriers are entitled to receive these revenues from intrastate passengers; (3) the increase of intrastate fares would produce the additional revenues needed by the carriers and to which they are entitled.

In the *Florida Log Case, Florida* vs. *United States*, 282 U. S. 194, the Supreme Court declined to sustain a finding by the Commission of undue dis-

crimination against interstate commerce, and in this connection the Court stated:

> In the present instance the Commission did not undertake to establish a state-wide level of rates for the interstate transportation of logs, and in order to sustain the state-wide order as to intrastate rates (as one needed to avoid an undue burden on the revenues of the carrier and a consequent interference with the maintenance of an adequate transportation system) *it must appear that there are findings, supported by evidence of the essential facts as to the particular traffic and revenues, and the effect of the intrastate rates, both as existing and as prescribed, upon income of the carrier, which would justify that conclusion.* (Italics supplied.)

The Commission now construes this as imposing no duty upon it to study and appraise what the revenue needs of the carriers are, but instead as simply a ritualistic exercise designed by the Supreme Court to test the Commission's mathematical aptitude. If the Commission can obtain some statistics on the amount of traffic and count the amount of increased revenues which the increased rates would bring in to the carriers, does this satisfy the rule of the Florida Log Case in all its implications? We insist that it does not, and that the Commission is still under compulsion to inquire (1) whether the return to the carriers on their over-all business is adequate, (2) whether the return on their passenger service itself is adequate, (3) whether the cost of rendering the service, when reduced to per mile units, is greater than the fares applicable for intrastate travel. If on any one of these three bases it can be found from evidence that there is a revenue burden on inter-

state commerce, the Commission can apply the drastic remedies of Section 13; otherwise it cannot.

In the second decision of the Supreme Court in the *Florida Log Case*, 292 U. S. 1, the order of the Commission was attacked upon the ground that if the findings can be deemed to be adequate they are not supported by the evidence. In considering this exception the Court stated that when the Commission exercises its authority without error in the application of rules of law, its findings of facts "*supported by substantial evidence*" are not subject to review. In the present case it is insisted that there is a complete absence of any substantial evidence to sustain the finding of the Commission that certain revenues are *required* to enable the railroads to render adequate and efficient transportation service.

Also in *New York* vs. *United States*, 257 U. S. 591 (1922), as indicated in the first paragraph of the syllabus, this Court held that:

> Absence of any substantial evidence to sustain a finding of the Interstate Commerce Commission material to an order adjusting rates may be relied on in a suit directly attacking the order, to which the United States and the Commission are made parties.

In the light of this principle of law, which is fundamentally sound, the following excerpt from the dissenting opinion of Commissioner Splawn (printed in full in Appendix D hereto, pages 100 to 109) takes on a deep significance:

> I wish to emphasize my disagreement with finding 5 in this report that traffic moving under these lower intrastate fares is not contributing its fair share of the revenues *required* to

enable respondents to render adequate and efficient transportation service. There is nothing in the report or the evidence to indicate that the revenues from the present passenger fares are less than those required to enable respondents to render adequate and efficient transportation service, or that there is any deficiency in respondents' revenues from their passenger and freight traffic considered as a whole. As a matter of fact, it does not affirmatively appear on this record that fares based on the lower intrastate level applied to both interstate and intrastate traffic would be less than required to enable respondents to render the character of service contemplated by Section 15a.

V

The record in this case shows conclusively that southern rail carriers are earning at excessively high rates of return before payment of federal income and excess profits taxes.

The complete absence of evidence to sustain the Commission's finding as to revenue requirements can best be demonstrated by a brief statement of what the record contains as to railroad earnings in 1942 and 1943. There would admittedly be some basis for such a finding if the carriers during these periods were earning no adequate return. But the proof in the record is that the eight major Tennessee carriers are in the aggregate earning 12.8 per cent on their investments, plus cash, materials and supplies, minus accrued depreciation and accrued amortization of defense projects, divided into *net railway operating income* before deduction of federal income taxes, the greater portion of the latter being taxes upon war profiteering.

The elaborate discussion in the brief filed on behalf of Fred M. Vinson, Economic Stabilization Director, in No. 592, of the rates of return of the carriers is adopted and relied upon by these appellants as a proper exposition of the facts and law applicable relative to this subject.

The order of the Interstate Commerce Commission in Docket No. 29037 was primarily and almost exclusively for the use, benefit, and advantage of the four major Tennessee railroads, these being the Louisville & Nashville Railroad Company, Southern Railway Company, Cincinnati, New Orleans & Texas Pacific Railway Company, and the Nashville, Chattanooga & St. Louis Railway Company. The evidence of record in this matter demonstrates that the rate of return (before federal income taxes and minus leased road rents) of these four railway companies on their net investment in railway property used in transportation service plus cash, materials, and supplies was as follows:

	12 Months Ending September 30, 1943
Louisville & Nashville Railroad	19.9%
Southern Railway	17.8%
Cincinnati, New Orleans & Texas Pacific Railway	25.0%
Nashville, Chattanooga & St. Louis Railway	21.5%

(R. 323-324; 414.)

These figures alone show that these four carriers do not need the revenues from the increase of intrastate fares in order to enable them to earn an adequate and, indeed, excessive return.

VI

Rates of return after payment of federal taxes are also greatly in excess of a fair return.

If the Court prefers to examine rates of return

after income taxes, in spite of the fact that the excess profits tax law so limits net profits as to make them a poor criterion to reflect true carrier earnings, the record shows that such returns are also well in excess of a fair return. According to the carriers' exhibit, all railroads in the southern region during 1942 earned in the aggregate after income taxes 6.41 per cent. (R. 141; 343.) The four major Tennessee carriers were earning during the first eight months of 1943 at the following annual rates of return after income taxes:

Louisville & Nashville Railroad	6.48%
Southern Railway	6.6 %
Cincinnati, New Orleans & Texas Pacific Railway	11.25%
Nashville, Chattanooga & St. Louis Railway	8.85%

These rates of return may be produced mathematically by using the Net Railway Operating Income of the carriers exhibited in reproduction of a report prepared by the Association of American Railroads. (R. 312; 405.) This publication shows the eight-month net income figures as follows: Louisville & Nashville Railway, $17,636,765; Southern Railway, $23,714,830; Cincinnati, New Orleans & Texas Pacific Railway, $4,145,883; and Nashville, Chattanooga & St. Louis Railway, $3,424,462. As a rate base we may properly use the Net Book Investment, plus Cash and Materials and Supplies, as follows: Louisville & Nashville Railway, $408,000,000; Southern Railway, $538,521,000; Cincinnati, New Orleans & Texas Pacific Railway, $55,234,000; Nashville, Chattanooga & St. Louis Railway, $57,956,000. (R. 323-324; 414.)

We protest against the justness of this method of computing rates of return because it has the effect

of saddling upon the consuming public the burden of paying the heavy taxes that the federal government has levied as a penalty upon the carriers for war profiteering.

The discussion by the Supreme Court of Michigan in the case of *Detroit* vs. *Michigan Public Service Commission*, 308 Mich. 706, 14 N. W. (2d) 784, 785 (1944) is pertinent to this issue; the opinion is most ably considered and to be commended to all regulatory agencies.

The Court said:

> In the instant case the question narrows down to whether the Commission in passing upon a petition to reduce the rate charged the consumer by the public utility should consider and exercise its discretion in respect to the exclusion in whole or in part of "excess profits" of the character hereinabove noted . . .
>
> In the instant case the Commission disclaims that it possesses any power to consider this matter. It thus completely ignores its discretionary authority to exclude those items from public utility operating expenses which place unnecessary burdens upon the consumer. Obviously in so doing the Commission failed to balance investor and public interests.
>
> The Commission arrived at its conclusion in the instant case upon the erroneous assumption that it was wholly without power to exclude from its consideration in fixing the rate to be charged to the consumer the undisputed fact that the presently approved rate produces "excess profits of approximately $8,000,000 on which there is a 90 per cent excess profit tax." Under such circumstances it cannot be said that a fair and adequate hearing was had before the Commission.
>
> . . .

Without discretionary power to exclude any and all unnecessary elements of expense in determining a just and reasonable rate, the Michigan Public Service Commission would be an impotent body. It could not have been the intent of the Legislature that the Commission should lack any necessary power to fix reasonable rates, and the Commission should not be permitted to declare itself impotent. It clearly possesses such discretionary power, and that power should be exercised.

A like principle has been approved in a number of other authorities including

Re Washington Gas Light Co., 46 P. U. R. (N. S.) 1, 11.

Panhandle Eastern Pipeline Co. vs. *Federal Power Commission*, 143 F. 2d 488.

South American Rate Order, F. C. C. (report dated June 22, 1943.

VII

Passenger operating ratios are lower than at any time in history and passenger traffic, both interstate and intrastate, is today contributing a larger proportion of rail profits than is freight traffic.

In still another way the earnings of the carriers may be shown. Passenger operating ratios represent the best criterion as to the earnings of the carriers from passenger service alone. For many years these ratios were invariably deficit figures, and passenger service was supported by freight earnings. Today this experience is completely reversed, and passenger operating ratios are lower than freight. The ratios for the four carriers in the Tennessee case are as follows:

	Freight, 1942	Passenger, 1942	Freight Estimates for 9 months of 1943	Passenger Estimates for 9 months of 1943
Louisville & Nashville	55.9	72.0	57.1	52.5
Southern Railway	55.1	57.4	54.6	47.1
Cincinnati, New Orleans & Texas Pacific	51.2	62.1	52.4	52.8
Nashville, Chattanooga & St. Louis Railway	62.0	70.1	64.2	58.9

(R. 323-324; 411.)

VIII

The unit cost of passenger traffic in coaches is far less than the intrastate fares, thus demonstrating that if all fares, intrastate and interstate, were on the intrastate level, the carriers would still be deriving an adequate return.

In the second place it may be admitted that the rate of return in and of itself may not be sufficient to show that the intrastate fares are producing their fair share of the revenues. If the State-made fares are below the cost of rendering the service, they would be a burden upon interstate commerce in spite of the fact that the carriers were making a fair return. In other words, we emphasize that we are not insisting that the high returns of the carriers on their over-all traffic would give the States the power to order that intrastate traffic be carried free of charge. The States must still show that their fares pay more than the cost of rendering the service and contribute to the fair return of the carriers.

But in the present record it is proved by indisputable evidence, introduced by the carriers themselves, that the revenues required by all Tennessee

railroads to defray the expense of transportation in 1942 amounted to 1.22 cents per passenger mile or less, as compared with the intrastate fare of 1.65 cents per mile. The expense per passenger mile in *coaches* of the major railways in the South is shown by a computation set out in the appendix to the O. P. A. petition for reconsideration to be .68 of one cent per mile for 1943. (R. 501.)

For 1942 the revenue per passenger mile earned in coaches by railroads operating in Tennessee is shown by exhibits introduced by the carriers. (R. 141; 348.) By applying 1942 passenger operating ratios (R. 141; 346) to these revenues, the cost per mile in coaches can be approximated. This calculation produces the following results:

Louisville & Nashville Railroad	1.136c
Southern Railway	.912c
Cincinnati, New Orleans & Texas Pacific Railway	1.015c
Nashville, Chattanooga & St. Louis Railway	1.078c

For 1943 the comparable figures are not in the record. However, we do know that traffic was still trending upward, this having a distinct tendency to reduce unit costs, and at the same time reduce passenger operating ratios. Revenue passenger miles per car mile increased in 1943 on the Southern Railway from 25.25 to 31.89; on the Louisville & Nashville from 21.11 to 33.83; on the Cincinnati, New Orleans and Texas Pacific from 27.56 to 29.83; and on the Nashville, Chattanooga & St. Louis from 25.16 to 34.86. (R. 141; 356.)

The necessary inference to be drawn from this is that cost per mile in coaches throughout 1943 was considerably less than one cent. Applying the 1943 passenger ratios of these four carriers (R. 323-324;

411) to the revenues earned per passenger mile in coaches during 1942 (R. 141; 348) (these being fairly stable figures) gives a cost in coaches having a range on the various roads per passenger mile from .944 cent high to .752 cent low. Though the methods pursued are not statistically exact, they form a good common-sense basis for judging the question of the expenses of coach travel per passenger mile. Any figure which can be produced by any of these methods is far less than 1.65 cents per passenger mile that the Tennessee Commission has prescribed as a proper fare.

IX

In the absence of evidence of any need on the part of carriers for increased revenues the order of the Interstate Commerce Commission was an unconstitutional usurpation of the power of the State, in contravention of the Tenth Amendment of the Constitution of the United States.

In the face of this evidence it is not surprising that the District Court conceded that the facts of record establish "the nonexistence of any need" for "increased revenues." (R. 1359.) By the same token, however, the finding of the Interstate Commerce Commission that the State-made rates constitute a burden upon interstate commerce is arbitrary and wanton, not made upon substantial evidence, but in the face of the undisputed evidence to the contrary. It follows that the Interstate Commerce Commission exceeded its lawful powers under the Commerce Clause of the Constitution, and its order contravenes the Tenth Amendment to the Constitution of the United States.

Counsel for the Interstate Commerce Commission

has urged the point that the three States are insisting that there is no need for additional revenues on the part of the carriers and that this is tantamount to an insistence that Section 13 is to all effects and purposes suspended during periods of railroad prosperity. In an appeal to *reductio ad absurdum* he asks whether we contend that Section 13 is suspended during times of carriers' prosperity.

The answer is, *Yes; that is exactly our contention;* it is carrier prosperity and high earnings which operate to suspend Section 13. When intrastate rates are producing such large revenues that the carrier is making an ample return and there can be no burden on interstate commerce, the Interstate Commerce Commission has no Constitutional power to invoke the provisions of Section 13. In periods of exorbitant railroad earnings a revenue burden against interstate commerce simply cannot exist, and, to use the happy phrase suggested by counsel for the Interstate Commerce Commission, *this suspends Section 13.*

To hold otherwise would simply mean that the Commission can set aside State rates on a purely arbitrary, whimsical, and discretionary basis, if they differ from the interstate rates, whether there is any burden upon interstate commerce or not. In a deeper sense, the fact that the Commission has taken this position must be taken as a tacit admission that there was no evidence before the Commission that Tennessee railroads *required* $525,000 of additional intrastate revenues in order to enable them to adequately serve the transportation needs of the nation.

Section 13(4) is a statute which requires strict construction. The Commission should observe the

literal meaning of the words used. The statute does not proscribe all discrimination, but only such as is undue, unreasonable, and unjust. To require railroads to carry intrastate commerce at rates lower than those for interstate commerce at a time when the railroads are suffering from depressed revenue is undue, unreasonable, and unjust discrimination. To require them to carry intrastate commerce at less than its cost, including a fair return, also works an injustice upon the carriers, and this establishes the undueness and unreasonableness of the rates. On the other hand, if the railroads are making an adequate return, and if they are receiving from the intrastate rates the full cost of rendering the service, plus a fair contribution to the fair return, while there may be a discrimination, it is neither undue, unreasonable, nor unjust as no rights of the carrier are infringed. There is no element of injustice of which the carrier, as an instrument of interstate commerce, can complain. This fundamental difference between a mere discrimination and an unjust discrimination was completely overlooked by the District Court in its discussion of discrimination. (R. 1359.)

If Section 13 must be construed in the manner insisted by carriers, it is manifestly unconstitutional. The Supreme Court has held in *Houston E. & W. T. R. Co.* vs. *United States*, 234 U. S. 342 (1914), that Congress in its regulation of intrastate commerce is limited to those cases where the intrastate rates would injure, impede, hinder, or restrain interstate commerce by placing obstructions or burdens upon it. The Supreme Court said:

Congress is empowered to regulate, that is, to provide the law for the government of interstate commerce; to enact all "appropriate legislation" for its "protection and advancement" . . .; to adopt measures "to foster, protect, control, and restrain." . . . Its authority, extending to these interstate carriers as instruments of interstate commerce, necessarily embraces the right to control their operations in all matters having such a close and substantial relation to interstate traffic that the control is essential or appropriate to the security of that traffic, to the efficiency of the interstate service, and to the maintenance of conditions under which interstate commerce may be conducted upon fair terms and without molestation or hindrance. As it is competent for Congress to legislate to these ends, unquestionably it may seek their attainment by requiring that the agencies of interstate commerce shall not be used in such manner as to cripple, retard, or destroy it. The fact that carriers are instruments of intrastate commerce, as well as of interstate commerce, does not derogate from the complete and paramount authority of Congress over the latter, or preclude the federal power from being exerted to prevent the intrastate operations of such carriers from being made a means of injury to that which has been confided to federal care. Wherever the interstate and intrastate transactions of carriers are so related that the government of the one involves the control of the other, it is Congress, and not the State, that is entitled to prescribe the final and dominant rules, for otherwise Congress would be denied the exercise of its constitutional authority, and the State, and not the nation, would be supreme within the national field. . . .

Likewise in the case of *Wisconsin Railroad Com-*

mission vs. *Chicago B. & Q. R. Company*, 257 U. S. 563, the Supreme Court declared:

> Congress as the dominant controller of interstate commerce may, therefore, restrain undue limitations of the earning power of the interstate commerce system in doing state work.
>
> * * *
>
> Action of the Interstate Commerce Commission in this regard should be directed to substantial disparity which operates as a real discrimination against, and obstruction to, interstate commerce, and must leave appropriate discretion to the State authorities to deal with intrastate rates as between themselves on the general level which the Interstate Commerce Commission has found to be fair to interstate commerce.

Where the earning power of the interstate commerce system is in no jeopardy because of the high earnings of the carriers Section 13 may not be invoked; and if, on the other hand, the section is to be construed as requiring the Interstate Commerce Commission to set aside State rates upon the showing of a mere disparity, and without finding any revenue requirements of the carriers upon substantial evidence that such needs exist, the section is clearly unconstitutional, and contravenes the Tenth Amendment to the Constitution of the United States.

However, it is our insistence that the statute does not require such action upon the part of the Interstate Commerce Commission; that Section 13 is constitutional; but that the action of the Interstate Commerce Commission in setting aside State rates without due regard for the requirements of the stat-

ute is an unconstitutional action of the United States taken under a constitutional statute.

X

The evidence of record establishes that the standards of through service on the railroads, predominantly interstate, are of superior quality to the standards of local service, predominantly intrastate, and that intrastate passenger transportation in Tennessee, on the average, is of an inferior grade to the service offered interstate passengers, on the average.

Both the Commission and the Court completely ignored the evidence as to the circumstances and conditions of intrastate travel in Tennessee. Their findings are directly opposite to the facts of record. The types of trains involved in a state-wide case in the South, and particularly in Tennessee, are of very unequal types. The Railroad and Public Utilities Commission of Tennessee, which commands a far more intimate and expert knowledge of local travel conditions in Tennessee than the Interstate Commerce Commission can possibly claim, made findings in its order of August 30, 1943, Docket No. 2535, which show that it considered the circumstances and conditions of intrastate rail service distinctly inferior to those of interstate service. (R. 51-52.)

This record incontrovertibly discloses that the standards of through service, predominantly interstate, are of an entirely different quality from the standards of local service, predominantly intrastate. The aspect of this matter which has the greatest significance is that the carriers in the South, in the very period in which they have made the greatest strides in improving their service, in providing luxurious

passenger equipment, catering to the comfort of the through travelers, have permitted their local service to progressively decline. The abandonment of passenger stations is one index of this deterioration. (R. 281-282.)

Thirty years ago there was not a great deal of difference between the facilities offered to the interstate and intrastate passenger. Both rode the same coaches in equal numbers or equal proportions. But the record conclusively shows that in Tennessee today the proportion of interstate travelers who are able to ride the *de luxe* air-conditioned reserved seat trains is far greater than the proportion of intrastate travelers; on the other hand, the proportion of intrastate or local passengers who have to ride the common low-grade and in many cases substandard coaches, completely destitute of modern comforts and conveniences, is far greater than the proportion of total interstate or through passengers. (R. 287-288.)

The plaintiffs do not concede in this case that standards of transportation offered intrastate passengers in the State of Tennessee on the average conform to the standards of service offered to interstate passengers on the average. The evidence in this record clearly shows that there is a pronounced distinction between the facilities used predominantly by interstate travelers in the State and the facilities used predominantly by intrastate travelers in the State. The following synopsis of this evidence clearly demonstrates that the Commission is here dealing with two entirely separate and distinct classes of service.

Passengers are free agents; therefore, the trans-

portation of passengers is quite different from the transportation of freight. The success or failure of the carrier's passenger business is to a large extent dependent upon its attitude in catering to the traveling public, or to what extent the following passenger transportation fundamentals are made available to the traveling public—namely, safety, speed, air conditioning, modernized equipment, economy in travel cost, accessibility, hospitality, convenience, comfort, frequency, reserved accommodations, luxurious service, buffet and tavern service (R. 288), all of which are referred to in the conclusions of the Federal Coordinator of Transportation on Passenger Traffic in his report of June, 1936.

Rail carriers are now to a limited extent pooling their passenger traffic. Three streamlined coach trains are now operated between Chicago, Illinois, and Miami, Florida, one train each way daily. On December 1 the "Southwind" leaves Chicago over the Pennsylvania Railroad; on December 2 the "Dixie Flagler" leaves Chicago over the Chicago and Eastern Illinois Railroad; on December 3 the "City of Miami" leaves Chicago over the Illinois Central Railroad. Coach tickets held by passengers for passage on either one of these coach trains can be exchanged at the option of passengers for passage over either of the other coach trains, which is an extra convenience. (R. 260.)

The route of the "City of Miami" through Tennessee is shown by exhibit. It is a Diesel-powered all-coach, streamlined train and carries no Pullmans. This train is equipped with all the latest improvements and conveniences offered to the public, such as *de luxe* reclining seats, reserved at no extra

cost, complete air conditioning, radio, stewardess, registered nurse, exclusive coach for women and children, tavern lounge, observation car, all for 2.2 cents per mile and no extra fares. The dining car service advertises that inexpensive meals are served. The speed through Tennessee is 51 miles per hour. Schedule stops are arranged so that this train may carry intrastate passengers in Illinois, Georgia, and Florida, and it handles interstate passengers into, out of, and through Tennessee. *However schedules do not allow passage of any intrastate passengers on this train in Tennessee.* (R. 312; 367.)

The route of the "Southwind" through Tennessee is also shown by exhibit. It is a streamlined all-coach train, has Pennsylvania Railroad equipment and dining car service, complete air conditioning, individual reclining chairs which must be reserved in advance and there is no extra charge. Regular stops are so arranged that it handles intrastate passengers in Alabama, Florida, and Georgia. It handles interstate passengers into, out of, and across Tennessee, *but carries no intrastate passengers in Tennessee.* It travels at an average speed of 51.22 miles per hour through Tennessee. (R. 312; 368.)

The route of the "Dixie Flagler" through Tennessee is also shown. It is a streamlined all-coach train; it has complete air conditioning individual reclining chairs which must be reserved at no extra cost; and regular coach fare rates apply. It has an average speed of 44.6 miles per hour in Tennessee. Stops are so arranged and published that this train may carry intrastate passengers in Illinois, Indiana, Georgia, and Florida. It also carries interstate passengers into, out of, and through Tennessee, *but its*

schedules are so arranged as to permit no travel thereon by intrastate passengers in Tennessee. (R. 312; 368.)

The President of the Louisville & Nashville Railroad takes such pride in these *de luxe* coach trains, the "Southwind" and "Flagler," that he refers to them in his 1942 annual report to stockholders in the following manner:

> The streamlined coach trains, the "Southwind" and the "Dixie Flagler," referred to in previous reports, continue popular. Their particular appeal to patrons is economy in travel costs, fast schedules, high type coach conveniences, and provisions for seat reservation. (R. 312; 391.)

The route of the "Pan-American" through Tennessee is also shown. It operates over the Louisville & Nashville Railroad between Cincinnati, Ohio, and New Orleans, Louisiana. Its equipment consists of air-conditioned coaches with individual reclining chairs at no extra cost, Pullmans, and dining cars. *Its stops are so arranged that its facilities are not available to intrastate passengers in Tennessee.* It handles interstate passengers into, out of, and through Tennessee, and intrastate passengers in Kentucky, Alabama, and Mississippi. Its speed through Tennessee is 43.5 miles per hour. (R. 312; 370.) This train can be heard every afternoon as it passes WSM Broadcasting Station at Nashville, Tennessee, over which it is advertised as the "Louisville & Nashville Railroad's crack passenger train." (R. 264.)

It is in evidence that the Nashville, Chattanooga & St. Louis Railway serves its passengers on 33.38

per cent of its entire mileage with mixed freight and passenger trains, while 38.54 per cent of this carrier's entire Tennessee mileage is served by mixed freight and passenger trains. (R. 312; 371; 251; 361; 362.)

The Nashville, Chattanooga & St. Louis Railway operates cafe-coach cars on its line between Memphis and Nashville, Tennessee, all seats reserved. These reserved seats are available to passengers upon payment of the cafe-coach seat fare which is an extra charge amounting to 25 cents up to 75 cents over and above the regular coach fare. (R. 312; 387-388.)

The Nashville, Chattanooga & St. Louis Railway operates six trains each way between Chattanooga and Nashville, Tennessee. (R. 312; 572-584.) Trains 11 and 12, the "Dixie Flagler," are streamlined interstate coach trains, having no intrastate service. Trains 90 and 91, 94 and 95, known as the "Dixie Flyer," and trains 3 and 4, 92 and 93, known as the "Dixie Limited," were described in the testimony as being particularly, primarily, and predominantly interstate trains. (R. 266.) Respondents referred to most of these trains as "our through Florida trains" and acknowledged they were predominantly and primarily interstate trains. (R. 109.) Trains 5 and 6 make all stops in Tennessee and take care of the intrastate passengers. All trains between Chattanooga and Nashville cross the Cumberland Mountains at Cowan, Tennessee. There are unusually difficult conditions incident to the movement of passenger trains over this mountainous country where it is necessary to maintain helper service, consisting of a mountain engine, engineer,

fireman, and conductor. (R. 108; 115-117.) This helper service is necessary for all through passenger trains. (R. 115.) As a general rule, trains 5 and 6 go over the mountain without the use of a helper. (R. 117.) The only intrastate passengers that are carried over the mountain at Cowan on a through train must be on trains 3 or 4, and must get off the train at Sherwood at 12:10 A.M., or board the train at Sherwood at 3:07 A.M., after flagging the train and inducing it to make a special stop. No part of this helper service expense is correctly chargeable to intrastate passenger transportation in Tennessee. (R. 266-267; 312; 380.)

It is shown in detail by exhibits that 302.16 miles of line, or 38.54 per cent of the mileage of the Nashville, Chattanooga & St. Louis Railway in Tennessee is served by mixed trains. A "mixed train" is a euphemistic term to describe an outmoded passenger coach on the rear of a freight train, which coach in addition to serving as a passenger coach is used by the train crew in lieu of a caboose. Some of these trains haul from 28 to 30 freight cars, which makes riding quite rough in the passenger coach on the rear. These trains consistently operate from 30 minutes to three hours late. The Columbia Branch and the Sparta Branch trains are lighted by electricity, others by kerosene lamps. All coaches are heated by coal stoves. Toilet facilities are unsanitary, no drinking cups are provided, and generally the windows, floors, and seats are in need of cleaning. All coaches are old style with open vestibules. These trains serve some of Tennessee's most thriving communities, such as Shelbyville, McMinnville, Sparta, Columbia, Lewisburg, Fayetteville, Win-

chester, and Whitwell, having populations ranging from 2,500 to 10,579. (R. 251; 362; 312; 383; 234-245.)

Inasmuch as coaches are used in lieu of a caboose on these mixed trains, passengers are handled at no extra expense to carriers. (R. 290.)

All of these evidentiary facts prove conclusively that relative transportation conditions within the State of Tennessee and in the same general section of the country are not substantially similar. Intrastate passenger transportation in Tennessee, on the average, is of an inferior grade to that offered interstate passengers on the average.

The District Court dismissed this evidence as of slight consequence. It recognized that the streamlined de luxe trains offer the traveling public higher standards of service than other regular or local trains. The Court followed this statement with the finding that ". . . in the great majority of cases the streamlined or de luxe trains are available to and actually carry both interstate and intrastate passengers. In a few instances their schedules do not provide for but one regular stop within a State, which prevents the transportation of intrastate passengers within that State, but such a schedule is apparently necessary in order to provide that type of service, and considering both that fact and the relative insignificance of this type of transportation it can be largely disregarded in making the general finding referred to." (R. 1358.)

These findings are completely without the bounds of the record. In the first place, the statement that a majority of the streamliners are available to and actually carry interstate and intrastate passengers

is completely foreign to the evidence introduced in the Tennessee case. But five streamliners are mentioned in rail service in Tennessee, these being the "City of Miami," the "Southwind," the "Dixie Flagler," the "Pan-American," and the "Tennessean" (Southern Railway). The record clearly establishes that four out of five of these trains offer no intrastate service in Tennessee whatever, while the record is completely silent as to whether the "Tennessean" carries interstate or intrastate passengers or both. With this state of the record that finding of the Court is purely gratuitous.

The finding that the air-conditioned, streamlined trains are relatively insignificant when compared with the whole body of rail transportation also takes the Court outside of the record. The record does not contain evidence as to how many trains operate on schedules in Tennessee. In the absence of this evidence the finding of the Court that five streamliners are relatively insignificant in a State like Tennessee must have been derived from the Court's private impression that a vast number of trains operate in the State. How reliable this impression may be we have no way of knowing.

The best guide to the relative importance of streamlined transportation, in the total absence of exact proof, is the inference to be gained from the timetable of the Nashville, Chattanooga & St. Louis Railway exhibited in the record. (R. 312; 373-384.) Page 15 of this timetable (R. 380) shows the scheduled service on the main line of the carrier. There are six schedules north and six south. One of these in each direction is the "Dixie Flagler," Numbers 11 and 12, the streamliner. Whether these schedules

represent a large or small proportion of total traffic over the main line would depend on many factors not in the record, such as length of trains, whether operated in one or more sections, and frequency of schedules. As an estimate or guess the Court might have decided from this timetable that this streamliner carried something less than 15 per cent and more than 7 per cent of the traffic on the main line.

The record also shows that the Nashville, Chattanooga & St. Louis Railway, having 43 per cent of the total rate disparity ($240,215 out of a total of $556,280) (R. 141; 341), has but one streamliner, while the Louisville and Nashville Railroad, with 20 per cent of the disparity ($115,718 out of the total) (R. 141; 341), has two streamliners, the "Pan-American" and the "Southwind" (R. 312; 391). Considering these facts it should be inferred that the relative significance of the streamliners on this carrier is much higher than on the N. C. & St. L., possibly transporting 25 per cent or more of main line traffic.

In the face of these inferences, though we do not claim that they are wholly reliable, the finding of the Court is obviously improper.

The Court also referred to the specific findings of the Interstate Commerce Commission as "general findings." We respectfully submit that findings of fact are not general, but specific, and based on exact evidence, and that they are not approximately correct, but are either true or false. If we could establish (and the Court says we did) that intrastate passengers do not have the opportunity to ride with interstate passengers on *one single train* it would establish the falsity of the Commission's finding

Number 4 (Appendix B, pages 93 and 94). Yet the record clearly shows that there are four trains which are interstate 100 per cent, and these are four of the five finest trains operating in the State.

In what other way could a litigant proceed in order to show the Commission that conditions and circumstances of intrastate travel are inferior to those of interstate travel? Is it necessary that he prove that there is a complete severance of intrastate from interstate carriage? It is most respectfully urged that the record in this case is adequate to show the inferiority of the average intrastate passenger's lot in Tennessee to that of the average interstate passenger.

XI

There is no evidence in the record justifying the Commission in finding that the interstate fares are just and reasonable, such a finding being a necessary prerequisite to action under Section 13(4).

Ex Parte No. 148, *Increased Railway Rates, Fares, and Charges, 1942*, 248 I. C. C. 545, was a nation-wide investigation of all rates, passenger and freight, throughout the country. It was conducted as a result of a petition filed by class one railroads December 13, 1941, requesting that blanket horizontal increases be granted as an emergency measure to enable the carriers to meet the anticipated increases in costs due to the war. The petition requested as to passenger fares only:

> *A uniform increase of 10 per cent in all fares,* . . . (emphasis supplied).

and qualified this shortly thereafter with the phrase "as published in passenger tariffs." 248 I. C. C. 550.

Pursuant to investigation and hearing a 10 per cent increase both interstate and intrastate was allowed on passenger fares as published in the existing tariffs throughout the South and this increased coach fares from 1.5 cents per mile to 1.65 cents per mile.

The published report of the Commission, 248 I. C. C. 545, shows clearly that the investigation there conducted was on a nation-wide basis and was not the type of investigation which would have been made in order to effect major rate adjustments of fares having varying levels in different regions of the country. In an investigation of this type it was natural that the parties did not present evidence directed to the different levels which prevail; no opportunity to do so was afforded them, and the issues were so drawn that if it had been attempted the evidence would have been refused admission.

On July 14, 1942, months after the decision in Ex Parte No. 148, the railroads operating in Southern Passenger Association territory filed a petition in Docket No. 26550, *Passenger Fares and Surcharges*, asking that the Commission modify its findings and outstanding orders in that proceeding to the extent necessary to enable the railroads to publish tariffs increasing coach fares from 1.65 cents to 2.2 cents per mile. By order dated August 1, 1942, a copy of which has been filed in the record of the instant case, the Commission denied the petition filed in Docket No. 26550, thus refusing to modify the findings formerly made.

Having denied the petition, the Interstate Commerce Commission in the same order, and upon the same sheet of paper, recited that the order would

be entered in Ex Parte No. 148, and provided inconsistently that the order of January 21, 1942, be modified so as to authorize the railroads in the South to apply the increase of 10 per cent approved in said order to a passenger coach fare of 2 cents per mile on the lines of said railroads. By this circuitous route interstate coach fares were increased in the South from 1.5 cents per mile to 2.2 cents per mile, a 46 2/3 per cent increase, in a proceeding in which the petitioners had asked for a 10 per cent increase.

The case of *Arizona Grocery Company* vs. *Atchison, Topeka & Santa Fe Railway Company*, 284 U. S. 370, 52 S. Ct 183, 76 L. ed. 348 (1932) is the leading case by this Court holding that a determination by the Interstate Commerce Commission as to a particular rate makes that rate *per se* just and reasonable. Accordingly, it may be argued that Ex Parte 148, *Increased Railway Rates, Fares, and Charges, 1942*, established the reasonableness of the interstate fares of 2.2 cents per mile. However, the Commission in its opinion, 248 I. C. C. 545, 613, expressly excluded this result by holding specifically:

> Rates and charges increased as herein permitted are not prescribed rates and charges within the meaning of *Arizona Grocery Co.* vs. *Atchison, T. & S. F. Ry. Co.*, 284 U. S. 370.

Consequently the finding of the District Court that finding No. 1 of the Commission—viz., that the interstate fares of 2.2 cents per mile are reasonable—is supported by the evidence, said evidence consisting of the investigation made in Ex Parte 148, is erroneous. (R. 1355-1356.) The Court traced the history of the proceedings in Ex Parte 148 and rested its finding upon the assumed fact

that Ex Parte 148 had established the reasonableness of the interstate fares. The finding is directly contrary to the facts.

It is submitted that the procedure followed by the Commission was made without supporting pleadings, without supporting proof, and without notice to the parties before the Commission, and most certainly without notice to the parties in the present case that such increases were contemplated. It will, therefore, be seen immediately that the Commission was enabled to accomplish the increase of interstate fares without the necessity of making any finding whatever as to the reasonableness of such fares; in fact, it was able to dispense entirely with any proof as to the reasonableness of the interstate fares.

In the present case involving Tennessee intrastate fares, the Commission supplied the deficiencies in proof by drawing upon former decisions of the Commission and adopting, without new evidence, findings made in them. It went back to its decision in Docket No. 26550 for the finding that in 1936 2 cents per mile was a reasonable coach fare throughout the country, without prejudice to the maintenance of lower fares in certain of the major districts of the country, of which the South constitutes one, and with no further evidence of reasonableness grafted it upon the order in Docket No. 29037. It predicates its finding of reasonableness of the interstate fare in the present case upon the fact that the 2.2 cents fare was established in Ex Parte 148, an investigation in which the issue was whether the railroads were entitled to a 10 per cent increase, and no opportunity was afforded the petitioners to resist an increase amounting to nearly 50 per cent.

XII

The effect of the action of the Interstate Commerce Commission is not beneficial to the national economy, inasmuch as it is an administrative nullification of a justified regulatory procedure, in the insulated chambers afforded by the several States, without a proper regard for the rightful concern of local interests in local transportation facilities.

The record in this case, taken as a whole, can bear but one interpretation, which is that the desire of the Commission for uniformity in fare structure is so powerful that it was willing to assert authority over the intrastate fares upon the most slender factual grounds. It was intolerable to the Commission that forty-four States should have the 2.2 cents fare, while four States alone stood out for the 1.65 cents fare. However desirable in the social and economic sense nation-wide uniformity of passenger fares may be, it does not amount to a legal justification for overriding State authority.

There is also a social and economic benefit to be drawn from the reverse of uniformity. The individual States may contribute something to the national economy by the very fact that they do not all perform in the same patterns. Throughout an entire era of our history the States were circumscribed in their social experimentation by judicial restrictions stemming from a too narrow interpretation of the Fourteenth Amendment.

In one of his forty-three dissenting opinions to this Court's action in striking down State action because of the Fourteenth Amendment, Mr. Justice Holmes emphasized the importance of allowing the States to continue to experiment in fields of business

regulation. He closed his dissent in *Truax* vs. *Corrigan*, 257 U. S. 312, 344, 42 Sup. Ct. 124, 66 L. ed. 254, 268 (1921) with the following statement:

> . . . There is nothing that I more deprecate than the use of the Fourteenth Amendment beyond the absolute compulsion of its words to prevent the making of social experiments that an important part of the community desires, in the insulated chambers afforded by the several States, even though the experiments may seem futile or even noxious to me and to those whose judgment I most respect.

The foregoing was quoted and discussed in a lecture by Mr. Justice Frankfurter (prior to his appointment to this Court) which has been published with two others under the title: *Mr. Justice Holmes and the Supreme Court.*[1] After commenting that during Mr. Justice Holmes' last decade as a member of this Court more than a third of State legislation assailed under the Fourteenth Amendment "fell foul of the due process clause," Mr. Justice Frankfurter said:

> Such judicial control of the individualism of the States is an aspect of centralization too ofter overlooked. It is socially costly and often capricious—costly, because judicial nullification based on unexamined assumptions of policy stops experimentation at its source and bars needed increase to the fund of social knowledge through tests of trial and error; capricious, because it so often turns on the fortuitous circumstances which determine a majority decision, particularly in matters of fact and opinion not peculiarly within the professional competence of lawyers. Against this dangerous use of

[1] Harvard University Press. Cambridge, 1938.

judicial power, Mr. Justice Holmes directed the power and originality of his pen in the myriad variety of instances which presented the same central issue.[c]

It may be respectfully urged that there is no more virtue in the veto against State action by fiat of an administrative agency such as the Interstate Commerce Commission than there is by a judicial body. In either case the individualism of the States is checked and bars to the increase of social knowledge through trial and error are erected.

The Interstate Commerce Commission permitted the railroads through eleven years of depressed business to experiment with coach fares of 1.5 cents per mile; yet when in years of prosperous business conditions and high earnings four States seek to continue this experiment under more favorable circumstances, the Interstate Commerce Commission pronounces this effort unlawful, burdensome, and inimical to the national commerce. This action by the Commission has so little foundation in the evidence that it should be condemned as an unwarranted and arbitrary invasion of State authority, and set aside by this Court.

When the Commission extended federal control over Tennessee intrastate coach fares upon such a slender justification, it violated both the spirit and the letter of the pronouncement of this Court in the recent case of *City of Yonkers* vs. *United States of America*, 320 U. S. 685, 88 L. ed. 241, 64 Sup. Ct. R. 327 (1944), as follows:

> We recently stated that the extension of federal control into these traditional local domains

[c] *Op. cit.*, p. 88.

is a "delicate exercise of legislative policy in achieving a wise accommodation between the needs of central control and the lively maintenance of local institutions." *Palmer* vs. *Massachusetts*, 308 U. S. 79, 84, 84 L. ed. 93, 97, 60 S. Ct. 34, 41 Am. Bankr. Rep. (NS) 34. In the application of the doctrine of the *Shreveport case*, this Court has required the Commission to show meticulous respect for the interests of the States. It has insisted on a "suitable regard to the principle that whenever the federal power is exerted within what would otherwise be the domain of State power, the justification of the exercise of the federal power must clearly appear." *Florida* vs. *United States*, 282 U. S. 194, 211, 212, 75 L. ed. 291, 301, 302, 51 S. Ct. 119.

In this case the Court also said:

> . . . Proper regard for the rightful concern of local interests in the management of local transportation facilities makes desirable the requirement that federal power be exercised only where the statutory authority affirmatively appears. The sacrifice of these legitimate local interests may be as readily achieved through the Commission's oversight or neglect (*Illinois Commerce Commission* vs. *Thomson*, 318 U. S. 675, 87 L. ed. 1075, 63 S. Ct. 834) as by improper findings.

It is accordingly urged that the order of the Interstate Commerce Commission should be enjoined, set aside, and annulled.

CONCLUSION

For the foregoing reasons, it is plain that the judgment below, if sustained, will impair or destroy State regulation in important respects in disregard of the purpose of Congress as expressed in Section 13(4) of the Interstate Commerce Act, and in contravention of the Tenth Amendment of the United States Constitution. The record contains no facts to justify a drastic action against the sovereignty of the States here involved, or upon which they should stand convicted of using their authority to impede, burden, cripple, or destroy interstate commerce.

We urge that the order of the Interstate Commerce Commission be set aside and held for naught, and that the decree of the District Court be reversed, with directions to that Court to enter a decree permanently enjoining the enforcement of the said order of the Commission.

Respectfully submitted,

LEON JOUROLMON, JR.,
Counsel for State of Tennessee and the Railroad and Public Utilities Commission of the State of Tennessee.

Dated at Nashville, Tennessee,
April 2, 1945.

APPENDIX A

INTERSTATE COMMERCE ACT

Sections 13 (4) and 15a (2).

Section 13 (4). Whenever in any such investigation the Commission, after full hearing, finds that any such rate, fare, charge, classification, regulation, or practice causes any undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce on the one hand and interstate or foreign commerce on the other hand, or any undue, unreasonable, or unjust discrimination against interstate or foreign commerce, which is hereby forbidden and declared to be unlawful, it shall prescribe the rate, fare, or charge, or the maximum or minimum, or maximum and minimum, thereafter to be charged, and the classification, regulation, or practice thereafter to be observed, in such manner as, in its judgment, will remove such advantage, preference, prejudice, or discrimination. Such rates, fares, charges, classifications, regulations, and practices shall be observed while in effect by the carriers parties to such proceedings affected thereby, the law of any State or the decision or order of any State authority to the contrary notwithstanding.

Section 15a (2). In the exercise of its power to prescribe just and reasonable rates the Commission shall give due consideration, among other factors, to the effect of rates on the movement of traffic by the carrier or carriers for which the rates are pre-

scribed; to the need, in the public interest, of adequate and efficient railway transportation service at the lowest cost consistent with the furnishing of such service; and to the need of revenues sufficient to enable the carriers, under honest, economical, and efficient management to provide such service.

APPENDIX B

FINDINGS OF FACT OF THE INTERSTATE COMMERCE COMMISSION, DOCKET NO. 28963, ALABAMA INTRASTATE FARES, MARCH 25, 1944

1. The interstate one-way and round-trip coach fares now in effect to, from, and through points in Alabama, Kentucky, North Carolina, and Tennessee, and the interstate round-trip fares applicable in sleeping and parlor cars now in effect to, from, and through points in Alabama and Tennessee, are just and reasonable.

2. The intrastate one-way and round-trip coach fares in Alabama, Kentucky, North Carolina, and Tennessee, with certain exceptions hereinbefore referred to and not here in issue, and the intrastate round-trip fares applicable in sleeping and parlor cars in Alabama and Tennessee, are lower than the corresponding fares applicable interstate and intrastate generally throughout southern territory, except in the several States mentioned in this finding.

3. The conditions affecting the one-way and round-trip transportation of passengers in coaches within these four States, and the round-trip transportation of passengers in sleeping and parlor cars within Alabama and Tennessee, intrastate on the one hand, and interstate to, from, and through those respective States on the other, are substantially similar.

4. Interstate passengers in these States travel in the same trains, generally in the same cars, with intrastate passengers, but are forced to pay higher

fares than the intrastate passengers for like services, to the undue and unreasonable advantage and preference of the intrastate passengers and the undue and unreasonable disadvantage and prejudice of the interstate passengers.

5. Respondent's revenues under the lower intrastate fares are less by at least $725,000 per annum in Alabama, $500,000 in Kentucky, $525,000 in North Carolina, and $525,000 in Tennessee than they would be if those fares were increased to the level of the corresponding interstate fares, and traffic moving under these lower intrastate fares is not contributing its fair share of the revenue required to enable respondents to render adequate and efficient transportation service.

6. The maintenance of intrastate one-way and round-trip coach fares in Alabama, Kentucky, North Carolina, and Tennessee, and of intrastate round-trip fares applicable in sleeping and parlor cars in Alabama and Tennessee, to the extent that such fares are on a lower level than the corresponding interstate fares, causes and will cause undue and unreasonable advantage to and preference of persons in intrastate commerce, undue and unreasonable disadvantage to and prejudice against persons in interstate commerce, and undue, unreasonable, and unjust discrimination against interstate commerce; and this unlawfulness should be removed by increasing the aforesaid intrastate fares in the respective States to the level of the corresponding interstate fares contemporaneously maintained by respondents to, from, and through such States; provided, that the aggregate charge made by any of

respondents for the intrastate transportation in any of the States shall not exceed the aggregate charge made for like accommodations and for a like distance by the same respondent for interstate transportation to, from, or through such State.

APPENDIX C

FINDINGS OF FACT AND CONCLUSIONS OF LAW OF THE DISTRICT COURT ENTERED AUGUST 3, 1944

FINDINGS OF FACT

1. On June 1, 1936, the Interstate Commerce Commission found in a proceeding then duly pending before it that the basic fare of 3.6 cents per passenger mile on interstate passenger coach travel in the territory south of the Ohio and Potomac Rivers and east of the Mississippi River was unreasonable to the extent that it exceeded 2 cents per passenger mile. Pursuant to said findings the basic interstate coach fare was on June 1, 1936, reduced from 3.6 cents to 2 cents per passenger mile.

2. The Interstate Commerce Commission by order of January 21, 1942, in a proceeding properly pending before it authorized an increase of 10 per cent in the interstate passenger coach fares effective February 10, 1942, thus raising the interstate passenger coach fare to 2.2 cents per passenger mile.

3. Shortly after October 1, 1942, the southern railroads filed with the Public Service Commission of Alabama, the Railroad and Public Utilities Commission of Tennessee, and the Railroad Commission of Kentucky certain traffic schedules to become effective December 1, 1942, designed to raise the intrastate passenger coach fares in the respective States to the level of the corresponding interstate fares. Each State Commission held an investigation and hearing and in each instance found that the evidence presented did not justify the increase sought. The proposed increases were denied in each instance.

4. On March 17, 1943, the railroads operating in Alabama filed with the Interstate Commerce Commission a petition seeking an investigation under Sections 3, 13, and 15 of the Interstate Commerce Act of intrastate passenger coach fares in Alabama. On June 24, 1943, the Kentucky railroads instituted similar proceedings before the Interstate Commerce Commission for authority to permit increases in Kentucky intrastate passenger coach fares, and at approximately that time the Tennessee railroads also instituted such proceedings with respect to the intrastate coach fares in Tennessee. The Interstate Commerce Commission consolidated all the proceedings before it, and after taking evidence and holding hearings issued its report and findings on March 25, 1944, under the style and docket number of Alabama Intrastate Fares No. 28963. The Commission found that the interstate coach fares in effect in Alabama, Kentucky, and Tennessee were just and reasonable; that the intrastate coach fares in said States were lower than the corresponding fares applicable interstate and intrastate generally throughout southern territory; that the conditions affecting transportation of passengers in coaches within these three States, intrastate on the one hand, and interstate to, from, and through these States on the other, were substantially similar; that interstate passengers in these States traveled in the same train and generally in the same cars with intrastate passengers, but were forced to pay higher fares than the intrastate passengers for like service; that the railroads' revenues under the lower intrastate fares were less by at least $725,000 per annum in Alabama, $500,000 in Kentucky, and $525,000 in Ten-

nessee than they would be if those fares were increased to the level of the corresponding interstate fares, and that traffic moving under these lower intrastate fares was not contributing its fair share of the revenues required to enable the railroads to render adequate and efficient transportation service; that the maintenance of intrastate coach fares in these States to the extent that such fares are on a lower level than the corresponding interstate fares caused and would cause undue, unreasonable, and unjust discrimination against interstate commerce, and that this unlawfulness should be removed by increasing the intrastate fares in the respective States to the level of the corresponding interstate fares contemporaneously maintained by the railroads to, from, and through such states.

5. Thereafter by order dated May 8, 1944, in said consolidated proceedings the Interstate Commerce Commission ordered the railroads operating in Alabama, Tennessee, and Kentucky to cease on or before July 1, 1944, from practicing the unjust discrimination found by it to exist, and thereafter to maintain and apply passenger fares for intrastate transportation in the respective States on bases no lower than the passenger fares then maintained and applied by the railroads for like accommodations in interstate transportation to, from, and through the respective States. The effective date of this order was thereafter postponed until August 15, 1944.

6. The said findings of the Interstate Commerce Commission in Alabama Intrastate Fares No. 28963 are supported by substantial evidence.

CONCLUSIONS OF LAW

1. The order of the Interstate Commerce Commission of May 8, 1944, which is sought to be set aside in these proceedings, is an authorized and valid order, correctly applies the proper principles of law to the facts so found by it and approved in these proceedings, and is not arbitrary and unreasonable.

2. The Interstate Commerce Commission properly required on the evidence before it and its findings of fact substantially supported by said evidence that the railroads operating in Alabama, Tennessee, and Kentucky establish and maintain intrastate coach fares for passengers on bases no lower than the existing interstate fares.

Wisconsin Ry. Commission vs. *C. B. & Q. R. R. Co.*, 257 U. S. 563.
New York vs. *United States*, 257 U. S. 591.
United States vs. *Louisiana*, 290 U. S. 70.
Florida vs. *United States*, 292 U. S. 1.
Illinois Commerce Commission vs. *United States*, 292 U. S. 474.
Vinson vs. *Washington Gas Co.*, 321 U. S. 489.
Interstate Commerce Commission et al. vs. *The City of Jersey City et al.*, U. S. Supreme Court, May 29, 1944.

3. The injunction prayed for in each of the three actions is denied and the proceedings should be dismissed in each instance.

APPENDIX D

DISSENTING OPINION OF COMMISSIONER SPLAWN IN DOCKET NO. 28963, ALABAMA INTRASTATE FARES, MARCH 25, 1944

SPLAWN, *Commissioner*, Dissenting:

In my judgment the decision of the majority on the evidence in these proceedings goes beyond our lawful power under Section 13(4). This view, I think, finds full support in several decisions by the Supreme Court of the United States in which the Court has had occasion to review some of our reports and orders under that section.

It should be emphasized that our authority under Section 13(4) to require increases in intrastate rates springs from and is an incident of the duty to regulate and protect interstate commerce. In exercising that power to nullify State authority we should be guided by the following wise and well-settled principles or standards which have been announced by the Supreme Court: (1) That this Commission has no general authority to regulate intrastate rates; (2) that the provision of Section 13(4) prohibiting unjust discrimination against interstate commerce is to be considered in connection with Section 15a; (3) that whenever the federal power is exerted within what would otherwise be the domain of State power, the justification of the exercise of the federal power must clearly appear; and (4) that the mere existence of a disparity between rates on intrastate and interstate traffic does not warrant us in prescribing intrastate rates. *Florida* vs. *United States*, 282 U. S. 194, 211-212.

These proceedings present two questions. First, do the intrastate passenger fares imposed by authority of these States cause any undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce on the one hand and interstate commerce on the other hand? And second, do the intrastate fares cause any undue, unreasonable, or unjust discrimination against interstate commerce?

In considering the first question it is important to observe that the prohibition against undue prejudice and preference as between persons and localities in interstate and intrastate commerce in Section 13(4) is substantially the same as the prohibition against undue prejudice and preference contained in Section 3(1). The principal difference between the two provisions is that Section 3(1) prohibits a *carrier* from giving an undue preference or causing an undue prejudice, while Section 13(4) prohibits any intrastate *rate*, *fare*, etc., from causing the undue preference or undue prejudice. In view of the similarity of the language employed in the two provisions, we have said that evidence to sustain an order and finding that intrastate rates are violative of Section 13(4) in that they unduly prejudice persons or localities must be of equal dignity and probative value as the evidence required to sustain a finding under Section 3(1). *Barrett Co.* vs. *Atchison, T. & S. F. Ry. Co.*, 172 I. C. C. 319, 334. The soundness of that rule is evident, for both provisions are directed against the same evils, namely, undue prejudice and undue preference as between localities and persons.

We have frequently found that the mere exist-

ence of a disparity in rates does not warrant a finding of undue prejudice and preference under Section 3(1), and that ordinarily the evidence to support such a finding must establish that such prejudice and preference constitute a source of undue disadvantage to one party and of undue advantage to another. To say that the evidence necessary to sustain a violation of the provision of Section 13(4) as to undue prejudice and preference as between localities and persons, can be of less dignity or less probative value than the evidence necessary to show a violation of Section 3(1) ignores completely the principle that whenever the federal power is exerted within what would otherwise be the domain of State power, the justification of the exercise of the federal power must clearly appear.

In support of their contention that the intrastate fares now maintained in these States cause undue prejudice and preference as between persons and localities, respondents rely upon (1) the similarity of the intrastate and interstate services, and (2) the differences in the fares.

The provision of Section 13(4) which deals with prejudice and preference as between persons and localities, as previously noted, corresponds to Section 3(1). Both of these provisions obviously are for the protection of persons and localities, and not primarily for the benefit of the carriers. The second provision of Section 13(4), which is discussed later herein, provides a complete remedy for the carriers in situations where intrastate rates, fares, etc., unlawfully discriminate against interstate commerce.

With respect to the situations in Kentucky and

Alabama, for example, no persons who pay the higher interstate fares and no localities are appearing herein to complain of undue prejudice and preference, or, without complaining, have testified that they are in any wise injured, and so far as these records disclose, none has complained to respondents. Under these circumstances we would not even have before us a complaint under Section 3(1), much less the evidence on which to base a finding of a violation of that section. Respondents do not ask relief for any particular persons or places, but seek state-wide orders.

In *Railroad Comm. of Wisconsin* vs. *Chicago, B. & Q. R. Co.*, 257 U. S. 563, and *State of New York* vs. *United States*, 257 U. S. 591, the Court held that orders entered by this Commission under Section 13(4) requiring horizontal increases of intrastate passenger fares throughout the States of Wisconsin and New York, to correspond with fares for like interstate service in the same States, could not be sustained as orders to remove undue prejudice and preference as between persons and localities. In the *Wisconsin case*, at page 580, in referring to the "sweep" of our order the Court said:

> It includes fares between all interior points, although neither may be near the border and the fares between them may not work a discrimination against interstate travelers at all. Nothing in the precedents cited justifies an order affecting all rates of a general description when it is clear that this would include many rates not within the proper class or the reason of the order. In such a case the saving clause by which exceptions are permitted cannot give the order validity. As said by this Court in the

Illinois Central R. R. case [245 U. S. 493]: "It is obvious that an order of a subordinate agency, such as the Commission, should not be given precedence over a State rate statute otherwise valid, unless, and except so far as, it conforms to a high standard of certainty." See also *American Express Co.* vs. *Caldwell*, 243 U. S. 617, 627.

In this report it is stated that "The evidence in each of these proceedings, therefore, contrary to the situation dealt with in [the *Wisconsin case*] establishes a condition which is state-wide." "Both intrastate and interstate passengers travel side by side under substantially similar circumstances and conditions on practically every passenger car on every branch and main line operated by respondents in each of these four States." Is it to be supposed that interstate passengers did not likewise ride on all trains to and from all branch and main-line points in Wisconsin? The cases are distinguishable, but in the following respect: In the *Wisconsin case* there was evidence that localities in Minnesota and Michigan in close proximity to localities in Wisconsin competed for the location of industries, and for retail trade, and to some extent for wholesale trade. This competition was affected by the lower State fares. In these cases there is no evidence whatever of competition or injury. The Court found that there was evidence which would support a finding of undue prejudice and preference against a large class of fares. As above indicated, objection to the Commission's order was that it was not restricted to the border points to which the evidence pertained, but that it included fares between all interior points, although they might not be near the border and the

fares between them might not work a discrimination against interstate travelers at all. To assume that the Court supposed that interstate passengers did not travel to and from the interior points, and to attempt to distinguish the cases upon that ground, is to miss the real point of distinction, which is that in the *Wisconsin case* there was evidence going beyond a mere showing of a difference in rates for similar services, and which tended to show injury to interstate localities, while the records herein are devoid of evidence of injury. If the order of the Commission there could not be sustained as an order to remove undue prejudice and preference as between persons and localities, what can be said in support of that phase of the state-wide orders herein which are unsupported by evidence beyond the mere difference in fares?

Turning now to the second question: Do the intrastate fares cause undue or unjust discrimination against interstate commerce? Here, respondents rely upon the loss of revenues which they contend has resulted from refusal of the State rate authorities to permit the intrastate fares to be increased to the interstate level. In Kentucky, for example, the estimated annual loss of revenue to all of the principal respondents in that State approximates $526,000.

Section 15a, which is intended, among other things, to insure a fair return for carriers provides that in the exercise of our power to prescribe just and reasonable rates we shall give due consideration, among other factors, to the need, in the public interest, of adequate and efficient railway transportation service at the lowest cost consistent with the

furnishing of such service, and to the need of revenues sufficient to enable the carriers, under honest, economical, and efficient management to provide such service. In the *Wisconsin case*, at page 586, the Court referred to the "dovetail relation" between the provision of Section 13(4) relating to unjust discrimination against interstate commerce and the purpose of Section 15a, as it then stood, and pointed out that if that purpose is *interfered with* by a disparity of intrastate rates we are authorized to end the disparity by directly removing it. Continuing, at page 590 the Court stated that action by the Commission in this regard should be directed to substantial disparity which operates as a real discrimination against, and obstruction to, interstate commerce. It should be noted that at the time of the decision in the *Wisconsin case*, Section 15a did not read the same as at present, but its general purpose was to secure to the carriers revenue sufficient to enable them to provide in the public interest adequate and efficient transportation service, the same as under the present provisions.

That something more than a disparity between interstate and intrastate rates is necessary to support a finding of undue discrimination against interstate commerce is made quite plain in *United States* vs. *Louisiana*, 290 U. S. 70, 74, 75; wherein the Court stated:

> By Section 416 of the Transportation Act, Section 13(4) Interstate Commerce Act, directly involved here, the Commission was given power to remove unjust discrimination by intrastate rates against interstate commerce, by prescribing minimum intrastate rates. This Court has consistently held that this section is to be

construed in the light of Section 15a(2) and as supplementing it, so that the forbidden discrimination against interstate commerce by intrastate rates includes those cases in which disparity of the latter rates operates to thwart the broad purpose of Section 15a to maintain an efficient transportation system by enabling the carriers to earn a fair return. So construed, Section 13(4) confers on the Commission the power to raise intrastate rates so that the intrastate traffic may produce its fair share of the earnings required to meet maintenance and operating costs and to yield a fair return on the value of property devoted to the transportation service, both interstate and intrastate. *Wisconsin Railroad Comm'n.* vs. *C., B. & Q. R. Co.*, *supra*, 586, 587, 588, 589, 590; *New York* vs. *United States*, 257 U. S. 591, 601; *Florida* vs. *United States*, *supra*, 211; *Louisiana* vs. *United States*, 284 U. S. 125, 131; see *Nashville, C. & St. L. Ry. Co.* vs. *Tennessee*, 262 U. S. 318.

In my judgment the evidence in these proceedings falls far short of establishing that the failure of respondents to receive additional revenue, which would result from increasing the present intrastate fares to the interstate level, operates to *interfere with* or to *thwart* the broad purpose of Section 15a to maintain an efficient transportation system. Nor can it be said that under present conditions the failure of the State Commissions to permit increases in the present intrastate fares constitutes an obstruction to interstate commerce.

In the Kentucky proceeding, for example, the relation of net railway operating income to investment in railway property including cash, materials, and supplies, for the seven principal respondents

shows average rates of return, after deduction of federal income taxes, as follows: 1938, 2.98 per cent; 1939, 3.76 per cent; 1940, 3.95 per cent; 1941, 5.41 per cent; 1942, 5.78 per cent. In this connection it is of interest that based on 1940 valuations recommended by our Bureau of Valuation the average rates of return for the respective years indicated would be 4.18 per cent, 5.31 per cent, 5.57 per cent, 7.81 per cent, 8.50 per cent, and 8.15 per cent. The increase in net railway operating income for passenger traffic alone, 1942 over 1911, was $50,992,801 for the 12 Class I respondents in the Alabama proceeding, and $29,506,275 for the seven principal respondents in the Kentucky proceeding.

I wish to emphasize my disagreement with finding five in this report that traffic moving under these lower intrastate fares is not contributing its fair share of the revenue *required* to enable respondents to render adequate and efficient transportation service. There is nothing in the report or the evidence to indicate that the revenues from the present passenger fares are less than those required to enable respondents to render adequate and efficient transportation service, or that there is any deficiency in respondents' revenues from their passenger and freight traffic considered as a whole. As a matter of fact, it does not affirmatively appear on this record that fares based on the lower intrastate level applied to both interstate and intrastate traffic would be less than required to enable respondents to render the character of service contemplated by Section 15a.

In each of these four States the State regulatory authority, after due consideration, authorized an

increase of 10 per cent on the going intrastate fares and declined to order or authorize a further increase to the interstate level. The fact that some of the adjoining States have permitted increases in intrastate fares to the interstate level is not binding upon the duly constituted authorities of these four States. The evidence in these proceedings does not sustain the contention that the maximum fares for interstate travel must also be the minimum fares for intrastate travel.

I am authorized to say that COMMISSIONERS AITCHISON and MAHAFFIE join in this expression.

FILE COPY

Office - Supreme Court, U. S.
FILED
APR 21 1945
CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1944

NUMBER 574

THE STATE OF ALABAMA AND PUBLIC SERVICE COMMISSION, THE STATE OF TENNESSEE AND THE RAILROAD AND PUBLIC UTILITIES COMMISSION OF THE STATE OF TENNESSEE, COMMONWEALTH OF KENTUCKY AND RAILROAD COMMISSION OF KENTUCKY,

Appellants

vs.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION AND FRED M. VINSON, ECONOMIC STABILIZATION DIRECTOR, BY CHESTER BOWLES, PRICE ADMINISTRATOR, ET AL.,

Appellees.

CHARTS TO BE USED IN ORAL ARGUMENT OF LEON JOUROLMON, JR., COUNSEL FOR STATE OF TENNESSEE, AND RAILROAD & PUBLIC UTILITIES COMMISSION

WASHINGTON, D. C.

April 23, 1945.

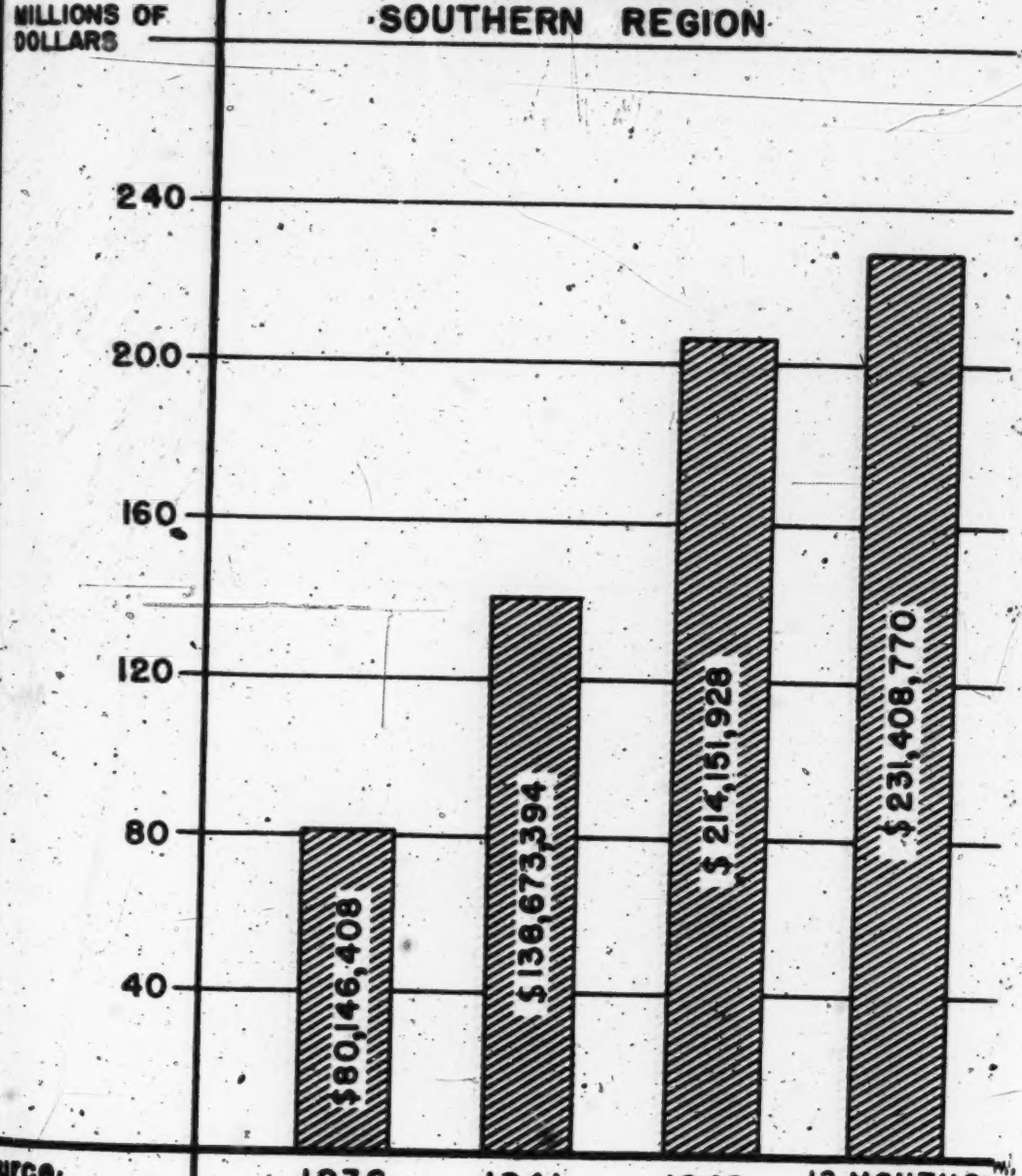
TABLE OF CHARTS

Chart No. 1.	Comparison of Railway Net Operating Income, 1936, 1941 and 1942.
Chart No. 2.	Comparison of Rate of Return After Taxes, 1936, 1941 and 1942.
Chart No. 3.	Rates of Return Before Income and Excess Profits Taxes, on Net Book Investment in Railway Transportation Property, Plus Cash, Materials and Supplies, 12 months Ending September 30, 1943.
Chart No. 4.	Comparison of Car Occupancy: Revenue Passenger Miles Per Car Mile, 1932, 1936, 1942 and 8 Months of 1943.
Chart No. 5.	Comparison of Passenger Miles Per Coach Mile, 1937 and 1942.
Chart No. 6.	Comparison of Revenue Passengers Per Train Mile, 1932, 1936, 1942 and 8 Months of 1943.
Chart No. 7.	Comparison of Passenger Revenue, first Eight Months, 1942, and first Eight Months of 1943.
Chart No. 8.	Comparison of Revenue Per Coach Mile Other Than Commutation, 1937 and 1942.
Chart No. 9.	Comparison of Revenue Per Car Mile by Various Classes of Cars, 1936, 1937 and 1942.
Chart No. 10.	Comparison of Passenger Operating Ratios 1936, 1942, and 9 Months of 1943 Estimated.
Chart No. 11.	Comparison of Intrastate Coach Passenger Fare With Cost Per Coach Mile, and Amount Available for Return, 1942.

Chart No. 12.	**Comparison of Intrastate Coach Passenger Fare with Cost Per Coach Mile and Amount Available for Return, by Four Carriers 1942—Showing Also Revenues, Expenses, and Net Income, Class I Railways, Southern Region, 1942, Upon Comparative Basis.**
Chart No. 13.	**Comparison of Intrastate Passenger Coach Fare with Cost Per Coach Mile and Amount Available For Return, by Four Carriers, Showing Also Revenues, Expenses, and Net Income, Class I Railways, Southern Region, First Eight Months, 1943, Upon Comparative Basis.**
Chart No. 14.	**Comparison of Cost and Profit Per Coach Mile, 1943, with Fare Prescribed by Tennessee Commission and that Ordered by Federal Commission.**

COMPARISON OF RAILWAY NET OPERATING INCOME, 1936, 1941, 1942 AND 12 MOS. ENDING AUG. 31, 1943.

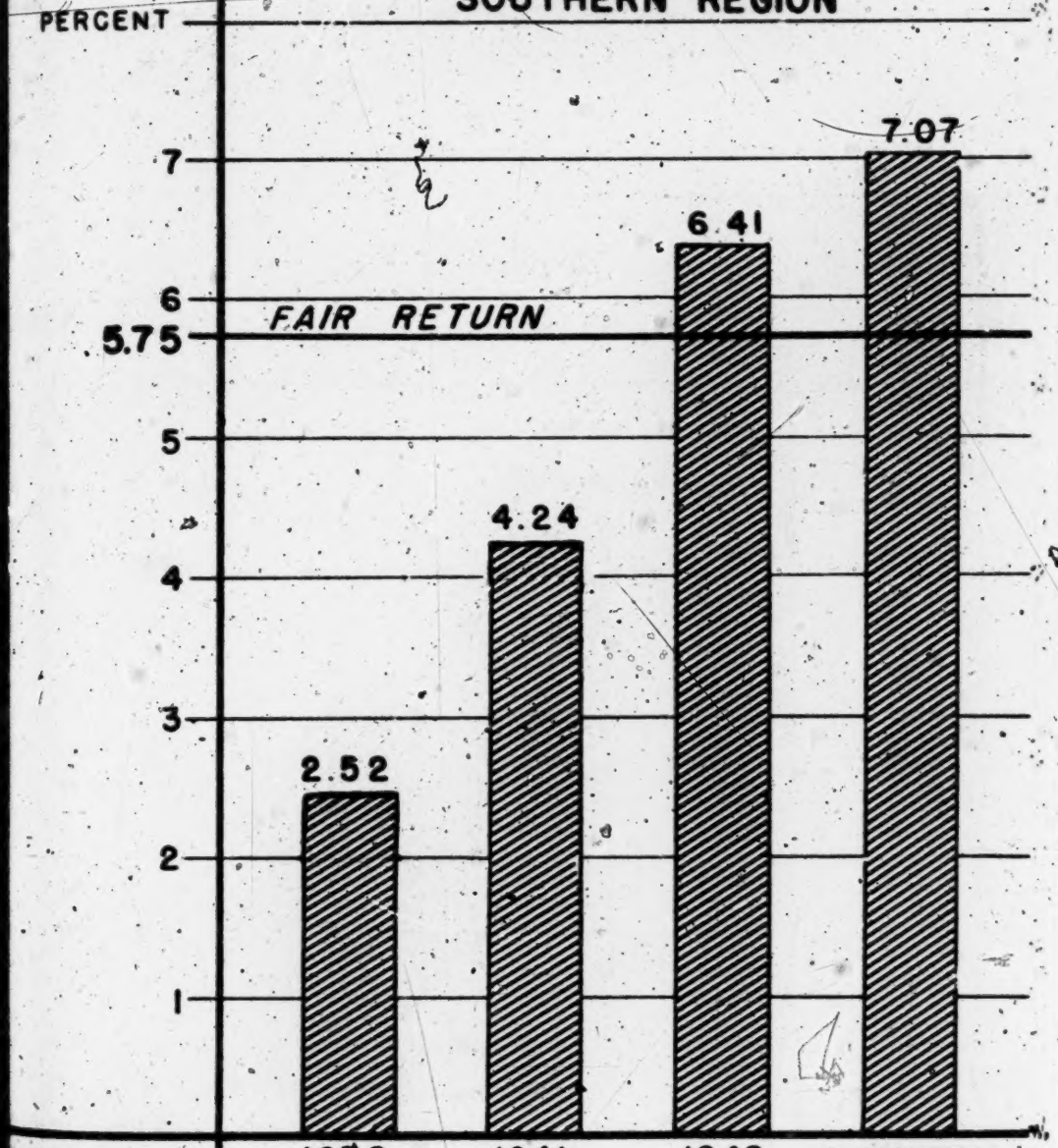
CLASS I RAILWAYS
SOUTHERN REGION



ource:
arriers' Ex. 6,
. 343;
enn. Ex. 11,
. 403.

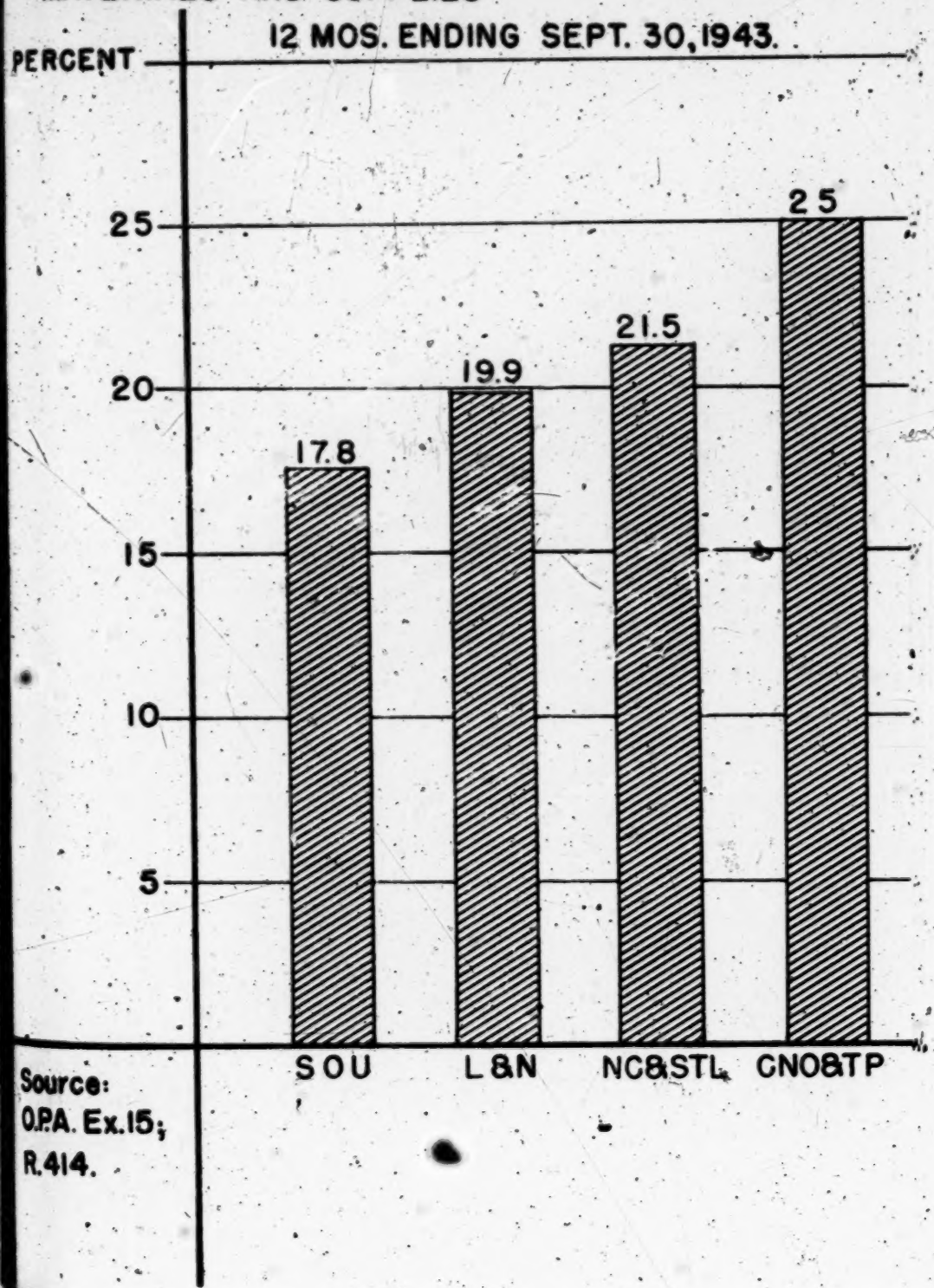
COMPARISON OF RATE OF RETURN AFTER TAXES, 1936, 1941, 1942 AND 12 MOS. ENDING AUG. 31, 1943

CLASS I RAILWAYS SOUTHERN REGION



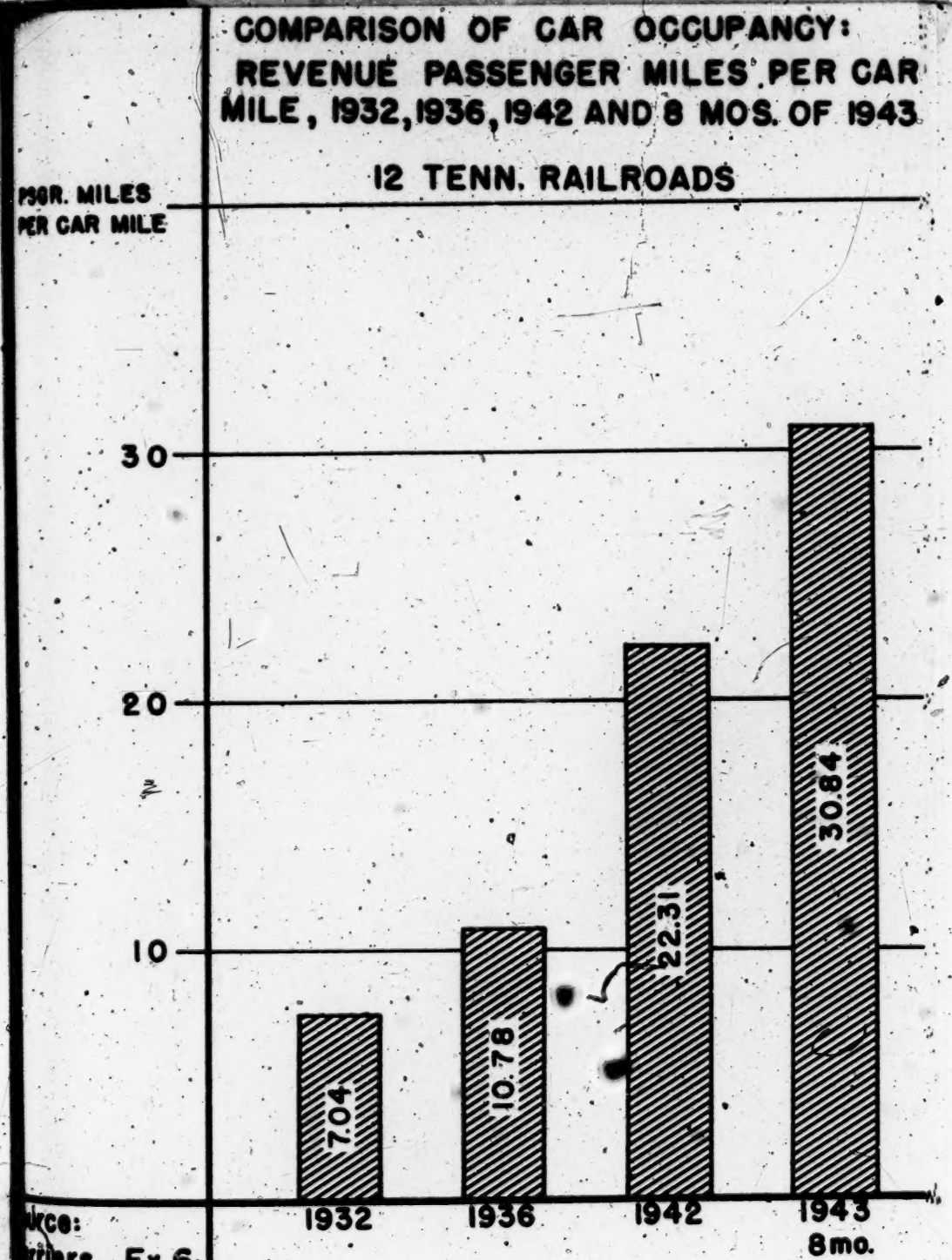
Source: Carriers' Ex. 6, R. 343; Gen. Ex. 11, R. 403.
Fair Return Found By I.C.C., 68 I.C.C. 676.

RATES OF RETURN BEFORE INCOME AND EXCESS PROFITS TAXES, ON NET BOOK INVESTMENT IN RAILWAY TRANSPORTATION PROPERTY, PLUS CASH, MATERIALS AND SUPPLIES

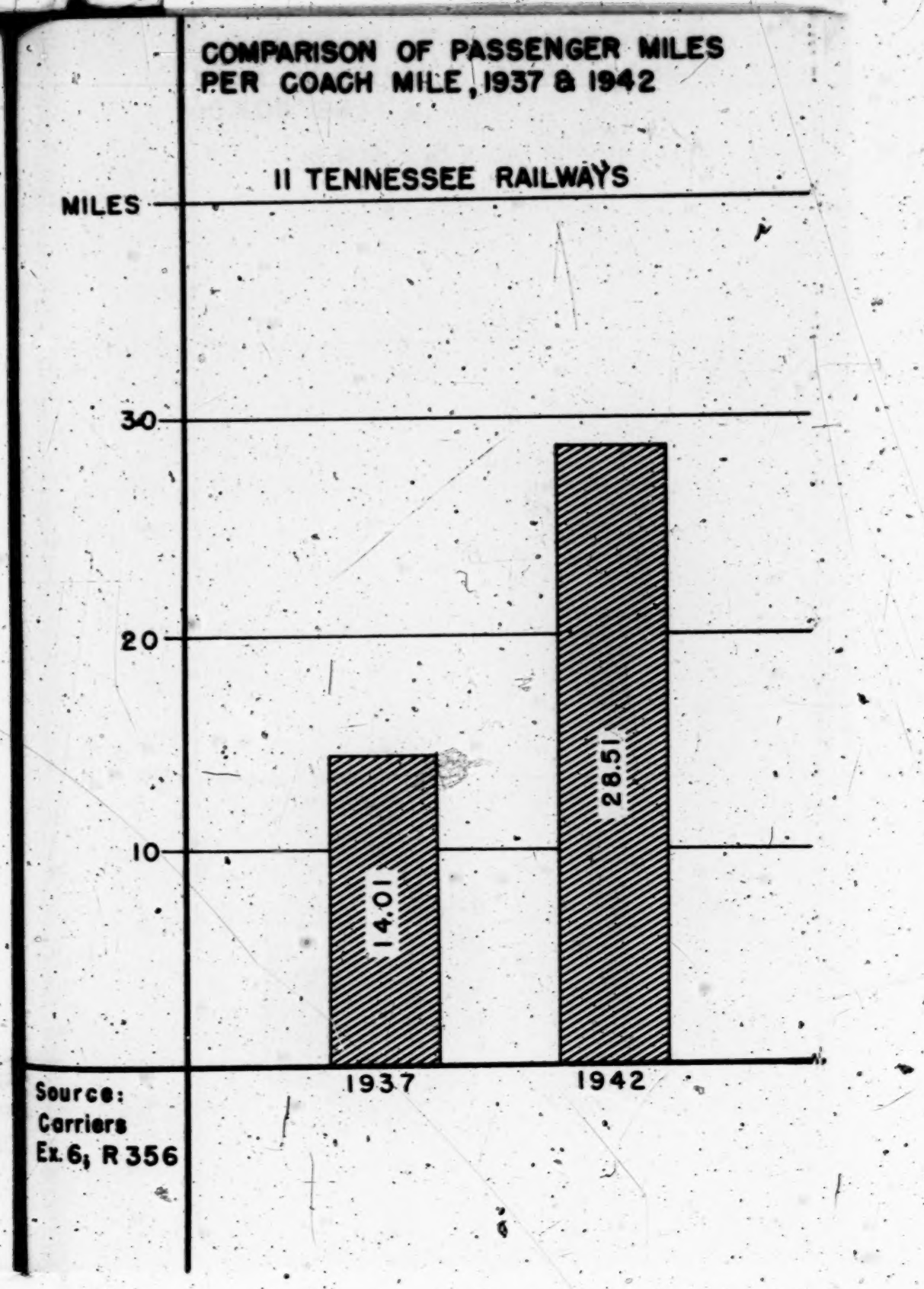


Source:
O.P.A. Ex. 15;
R. 414.

COMPARISON OF CAR OCCUPANCY: REVENUE PASSENGER MILES PER CAR MILE, 1932, 1936, 1942 AND 8 MOS. OF 1943

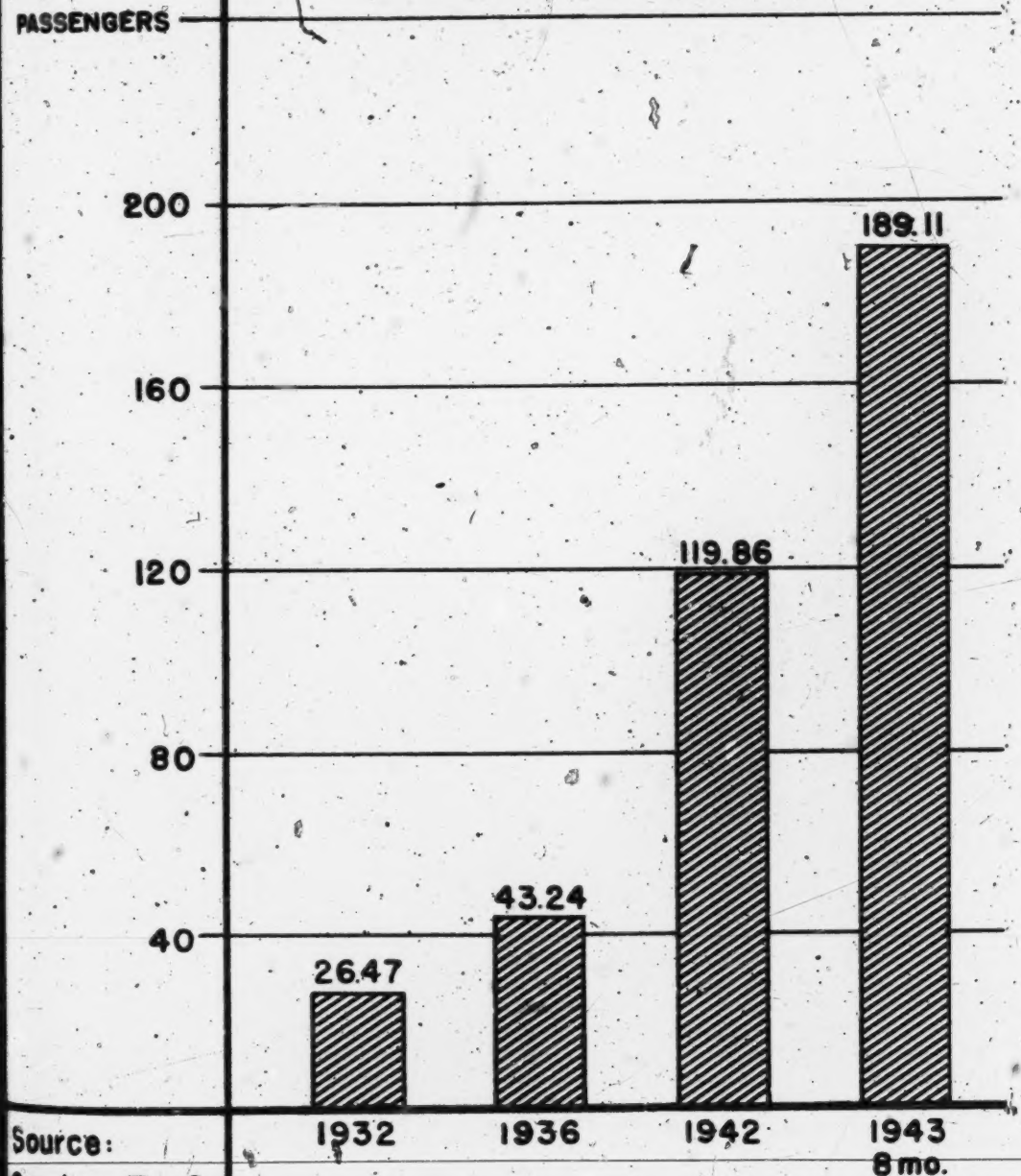


...rce:
...rriers Ex.6;
355, 356.


COMPARISON OF PASSENGER MILES PER COACH MILE, 1937 & 1942
11 TENNESSEE RAILWAYS
MILES
30
20
10
14.01
28.51
1937
1942
Source: Carriers Ex. 6, R 356

COMPARISON OF REVENUE PASSENGERS PER TRAIN MILE 1932, 1936, 1942 AND 8 MOS. 1943

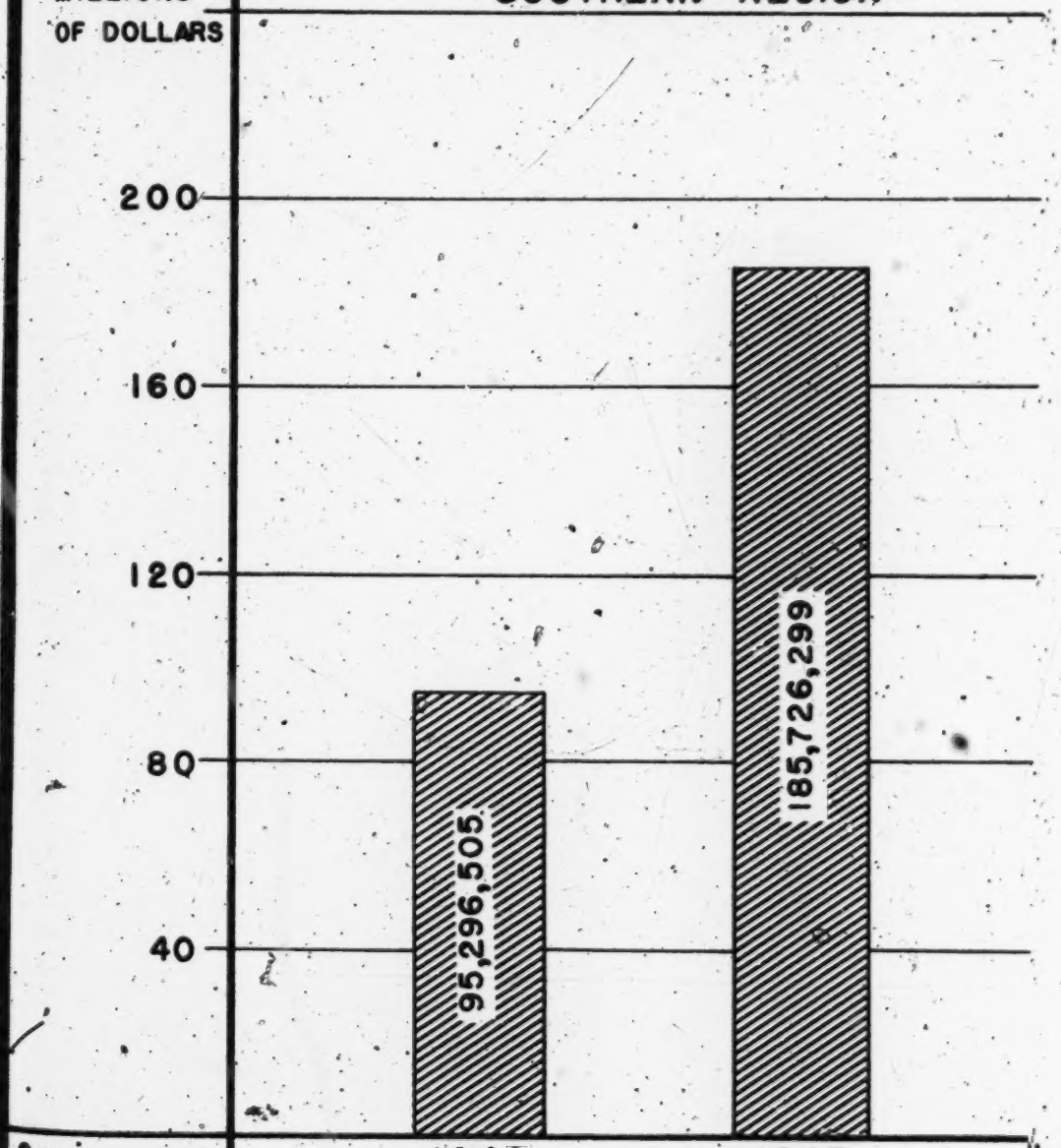
12 RAILWAYS IN TENNESSEE



Source:
Carrier Ex. 6;
R. 353, 354

COMPARISON OF PASSENGER REVENUE FIRST 8 MOS. OF 1942 & FIRST 8 MOS. OF 1943.

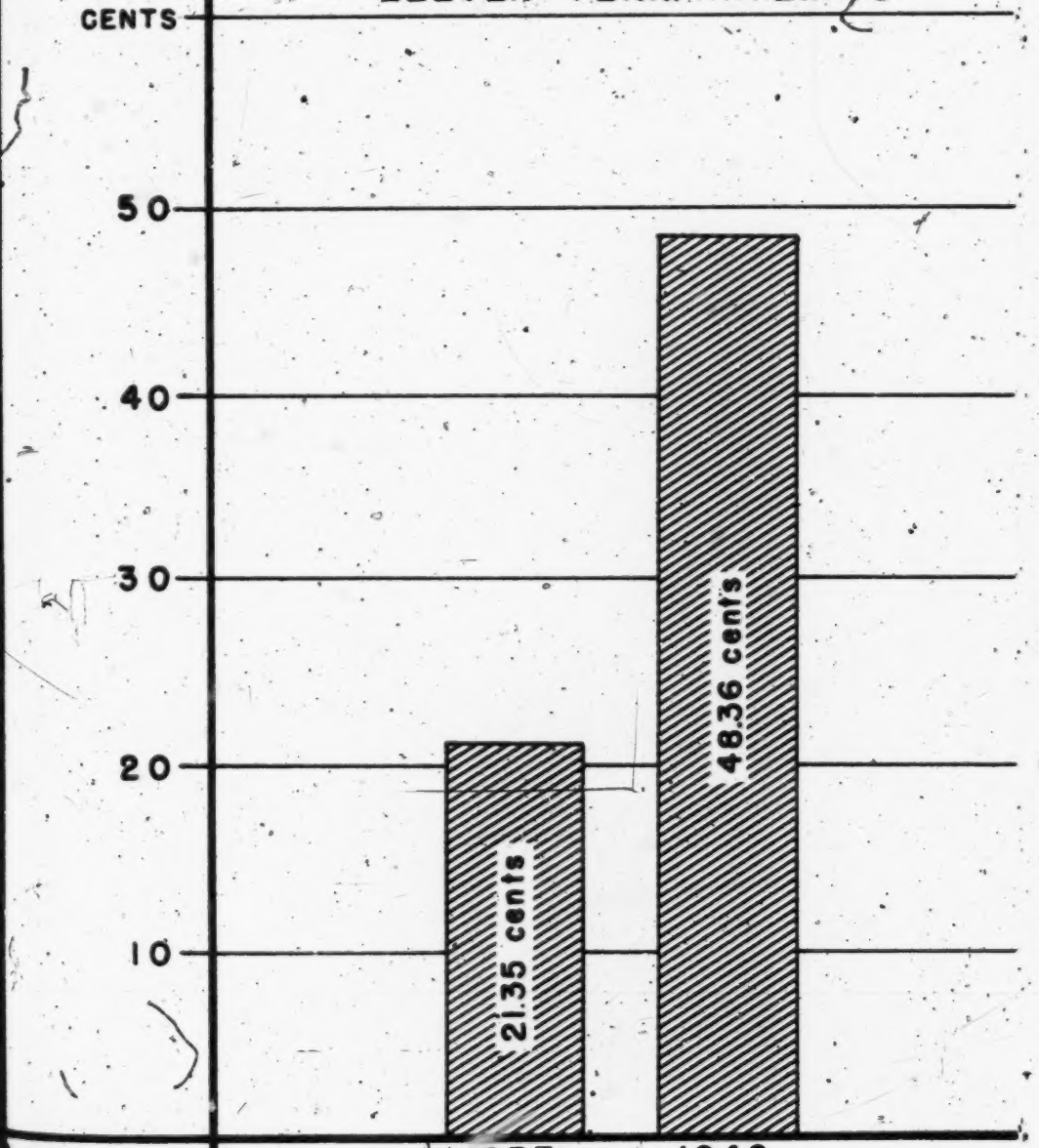
CLASS I RAILWAYS
SOUTHERN REGION



Source:
Tennessee
Ex. 11, R. 404.

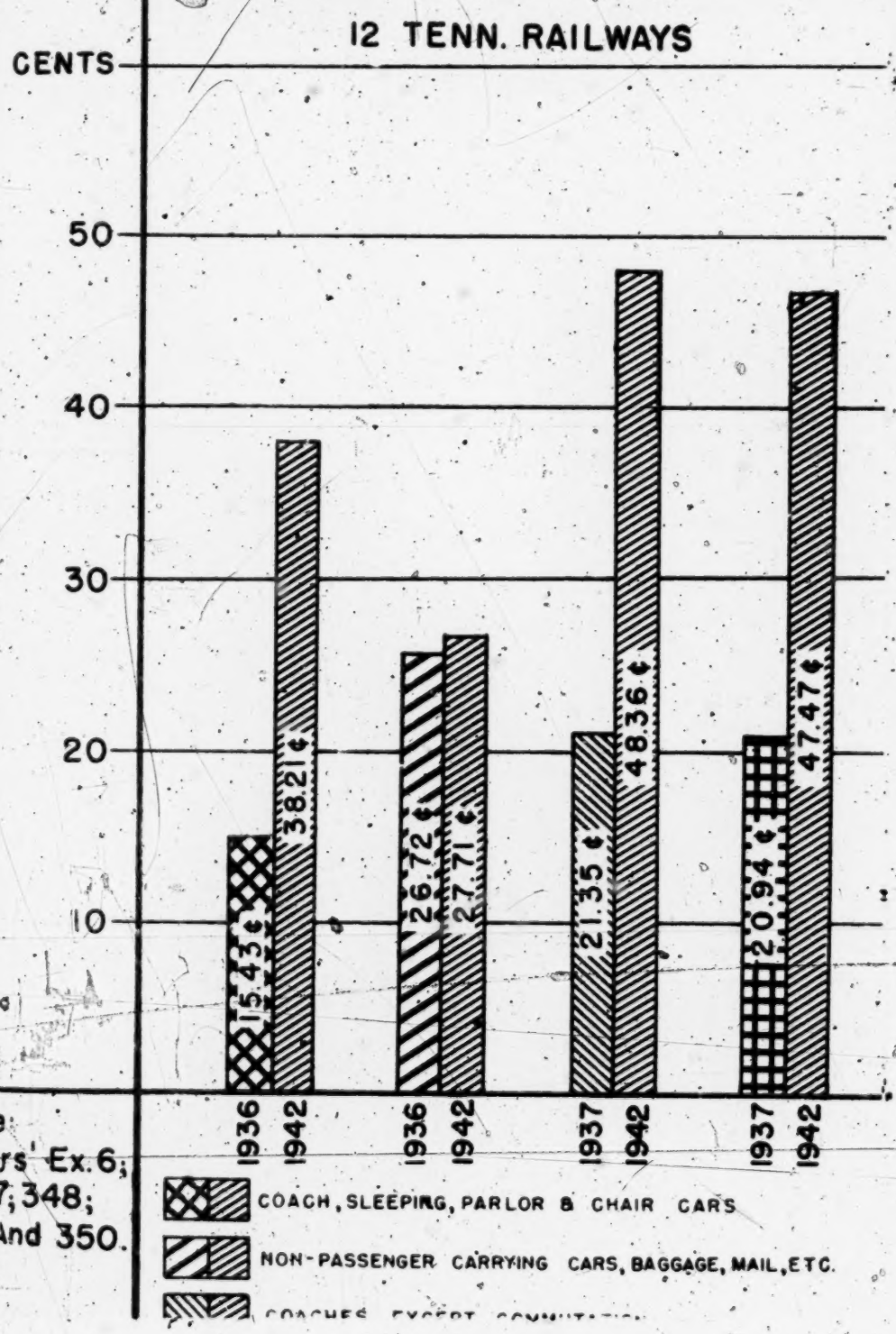
COMPARISON OF REVENUE PER COACH MILE (OTHER THAN COMMUTATION), 1937 AND 1942

ELEVEN TENN. RAILWAYS



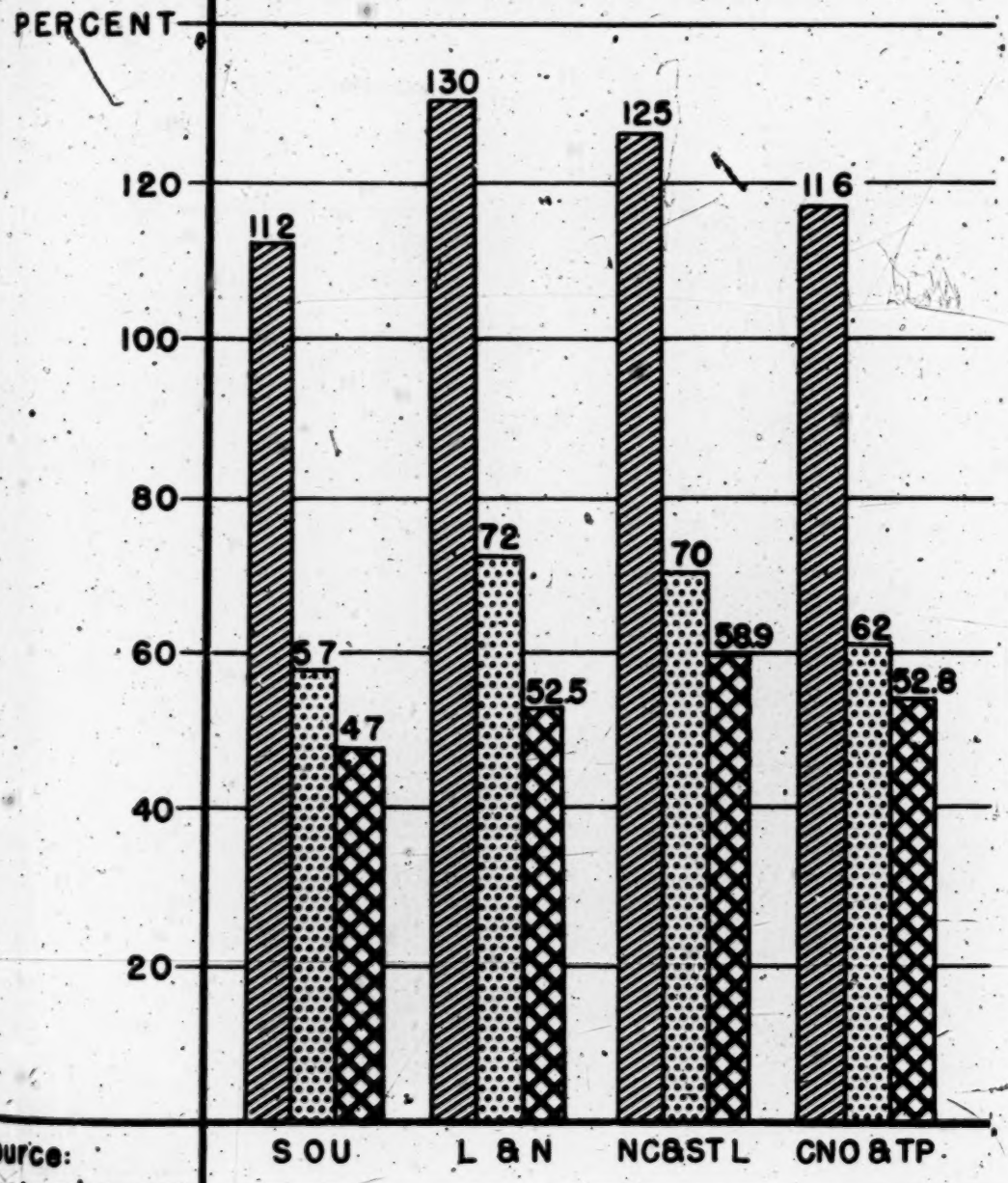
ource:
arriers Ex. 6,
349.

COMPARISON OF REVENUE PER CAR MILE BY VARIOUS CLASSES OF CARS, 1936, 1937 AND 1942.



ource:
arriers' Ex. 6;
347; 348;
49; And 350.

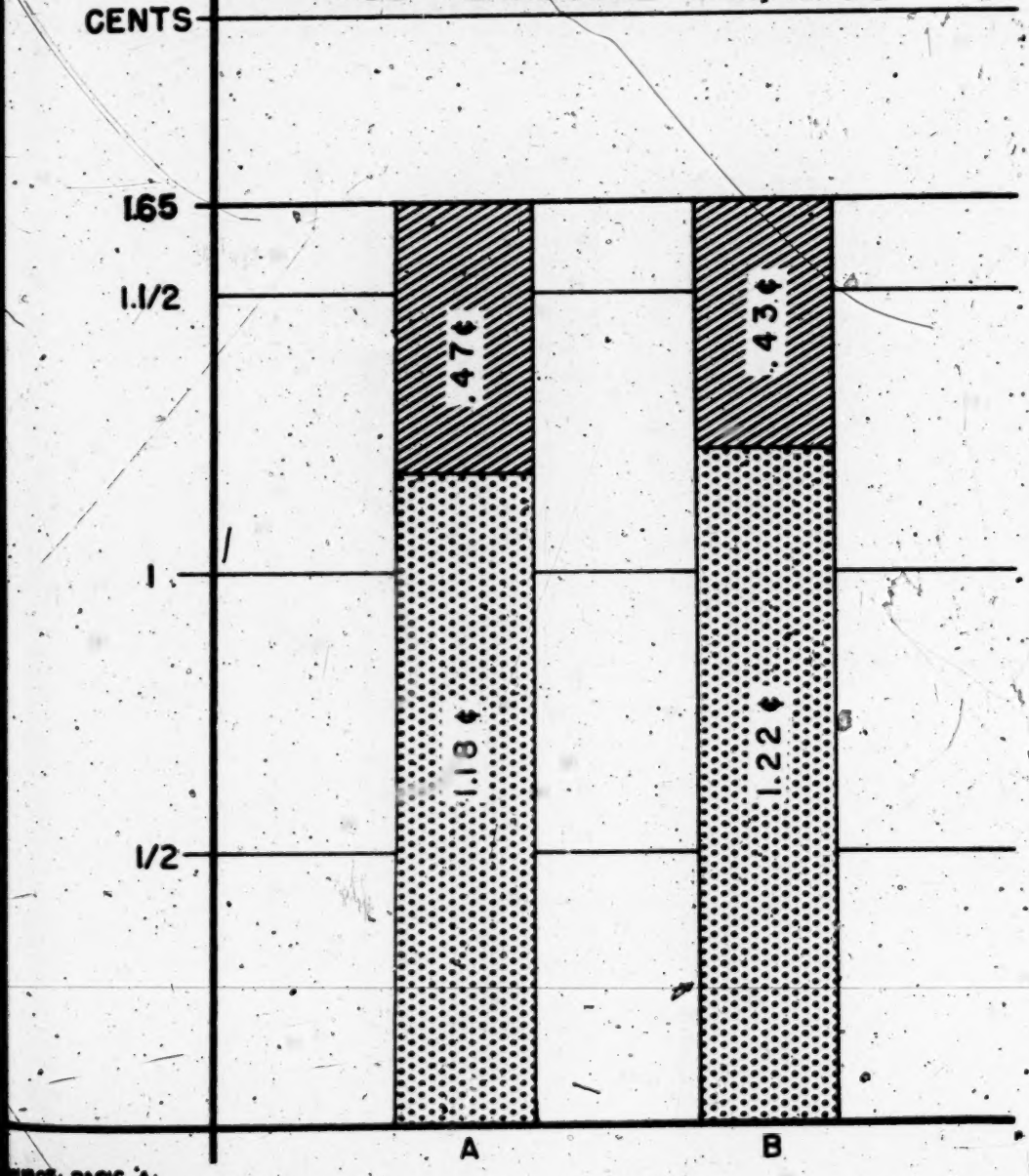
COMPARISON OF PASSENGER OPERATING RATIOS, 1936, 1942, AND FIRST 9 MOS. OF 1943.



Source:
Carriers' Ex. 6;
R. 346; O.P.A.
Ex. 13; R. 411.

COMPARISON OF INTRASTATE COACH PASSENGER FARE WITH COST PER COACH MILE, & AMOUNT AVAILABLE FOR RETURN, 1942

ALL TENNESSEE RAILROADS

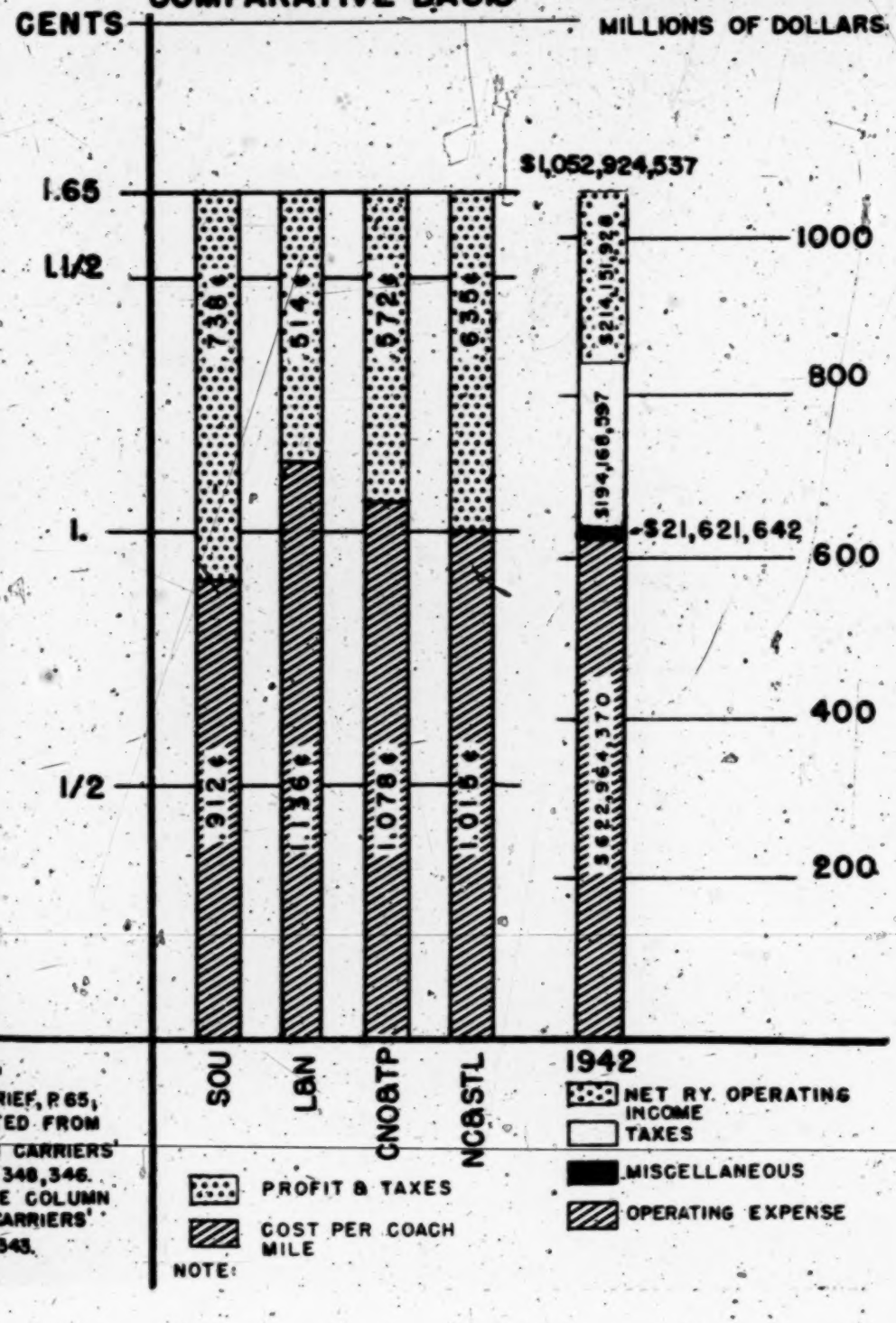


SOURCE: BASIS A: EXPENSE PER COACH MILE FOUND BY I.C.C. IN 30,214 I.C.C. 174, INCREASED 17.25% LABOR COST INCREASE; DIVIDED BY PASSENGERS PER COACH MILE, COMPUTATION FROM DATA IN CARRIERS EX. 6, VOL. 356
BASIS B: TENN. BRIEF, P. 27.

AVAILABLE FOR RETURN & TAXES

COST OR EXPENSE PER COACH MILE

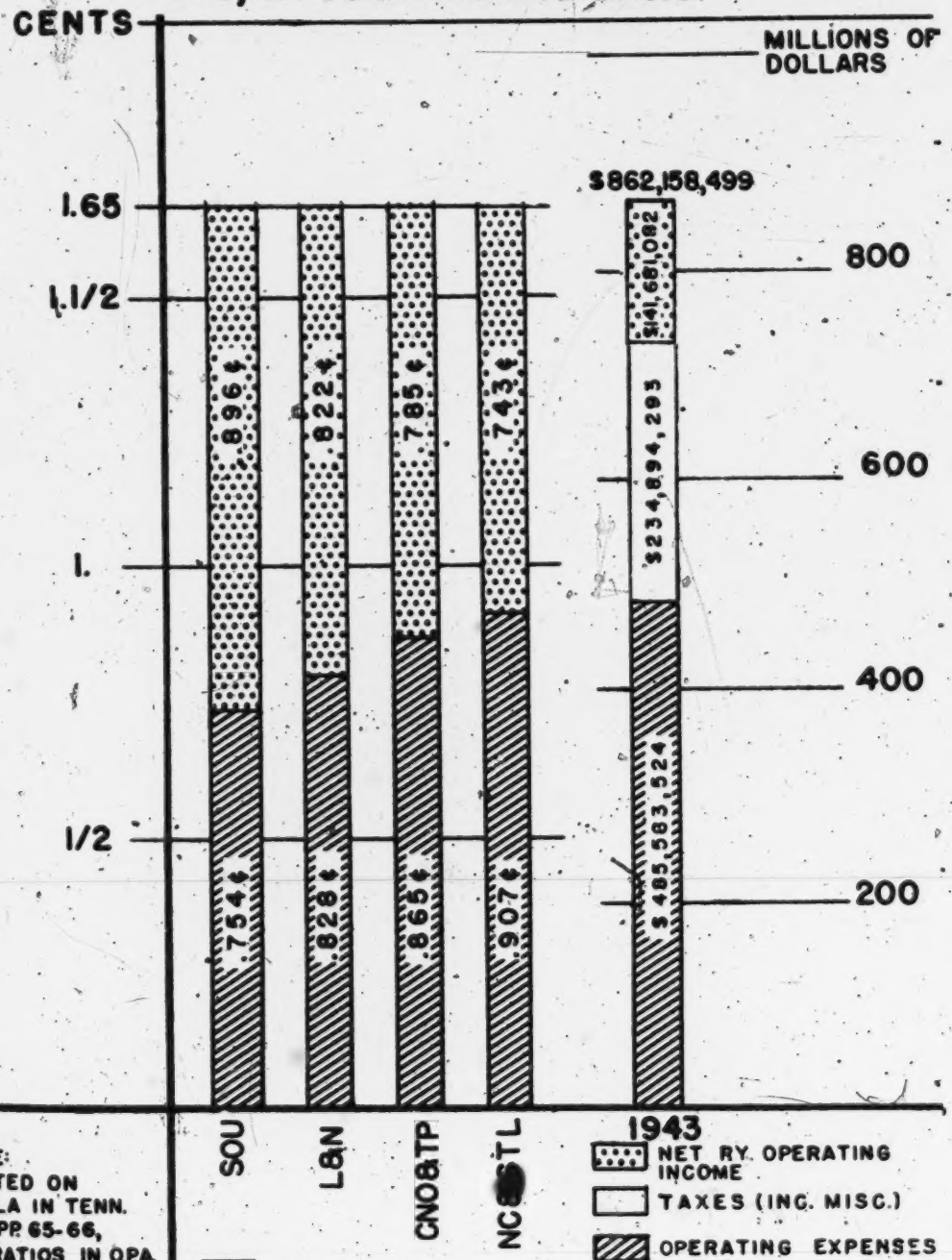
INTRASTATE COACH FARE WITH COST PER COACH-MILE & AMOUNT FOR RETURN, 1942 AND REVENUES, EXPENSES & NET INCOME, CLASS I RYS., SOUTHERN REGION, 1942, ON COMPARATIVE BASIS



SOURCE:
TERM. BRIEF, P 65, COMPUTED FROM DATA IN CARRIERS' EX. 6, R. 348, 346. REVENUE COLUMN FROM CARRIERS' EX. 6, R. 343.

NOTE:

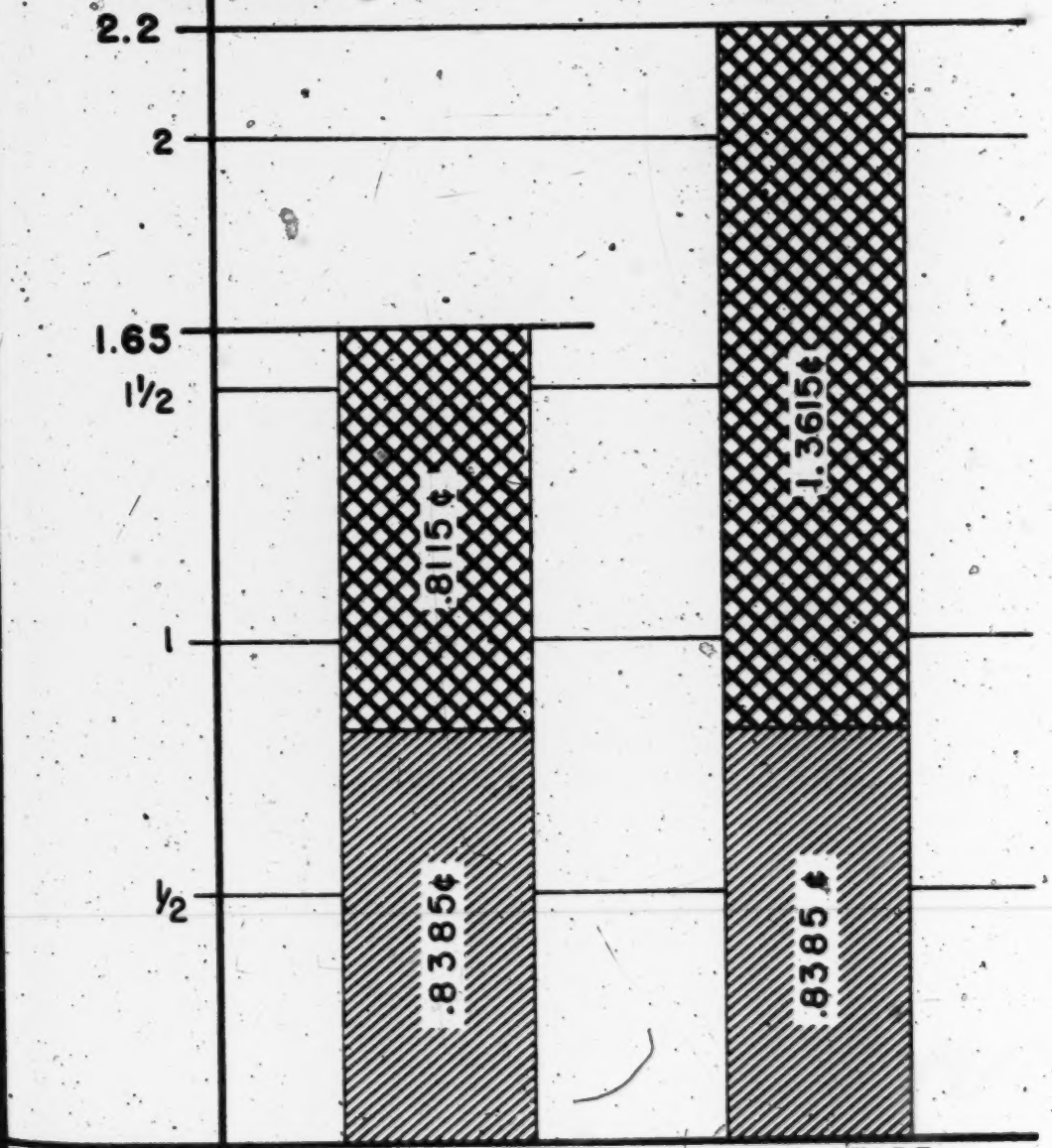
INTRASTATE COACH FARE WITH COST PER COACH-MILE & AMOUNT FOR RETURN, AND REVENUES EXPENSES & NET INCOME, CLASS I RYS., SOUTHERN REGION, IST 8 MOS, 1943, ON COMPARATIVE BASIS



SOURCE:
COMPUTED ON FORMULA IN TENN. BRIEF, PP. 65-66, FROM RATIOS IN O.P.A. EX. 13, R. 411, APPLIED TO DATA IN CARRIERS' EX. 6, R. 348, REVENUE COLUMN FROM TENN. EX. II, R. 404

NOTE:
THE NET RAILWAY OPERATING INCOME CORRESPONDS TO A

COMPARISON OF COST AND PROFIT PER COACH-MILE 1943 WITH FARE PRESCRIBED BY TENN. COMMISSION AND THAT ORDERED BY FEDERAL COMMISSION.



rce:
eighted average
cost & return
res shown on
rt No. 13

Note: Military coach fare, 1.25¢ (R.279) less than profit (plus taxes) on civilian fare, 1.3615¢

FILE COPY

Office - Supreme Court, U. S.
FILED
APR 16 1945
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1944

No. 574.

THE STATE OF ALABAMA, ET AL., *Appellants*,

v.

THE UNITED STATES OF AMERICA, ET AL., *Appellees*.

On Appeal From the District Court of the United States for the Western District of Kentucky, Louisville Division.

BRIEF ON BEHALF OF THE ALABAMA GREAT SOUTHERN RAILROAD COMPANY, ET AL., APPELLEES.

W. L. GRUBBS,
E. A. SMITH,
Y. D. LOTT,
H. L. WALKER,
L. L. OLIVER,
F. W. GWATHMEY,
CHARLES CLARK,

Attorneys for Alabama Great Southern Railroad Company, et al., Appellees.

TABLE OF CONTENTS.

	Page
OPINIONS BELOW	1
JURISDICTION	2
THE STATUTE INVOLVED	3
STATEMENT OF THE CASE	4
ARGUMENT	7
The Ultimate Findings and Conclusions of the I. C. C. Are Grounded Upon Basic Findings of Fact Adequately Supported by Evidence	7
The interstate fares to which level the I. C. C. ordered the intrastate fares increased were duly found to be reasonable fares	11
The I. C. C.'s findings of preference and prejudice as between interstate and intrastate passengers are supported by evidence	11
The evidence supports the I. C. C.'s findings of undue and unlawful discrimination against interstate commerce	17
CONCLUSION	21
APPENDIX NO. 1	
Certain Sections of the Interstate Commerce Act, Part I	25
APPENDIX NO. 2	
Findings of the Interstate Commerce Commission and Evidence Supporting Such Findings	29
APPENDIX NO. 3	
Thirteenth-Section Cases Involving the Standard Passenger Fares	46

TABLE OF CASES.

	Page
Alabama Intrastate Fares, 258 I. C. C. 133	2, 5, 11, 12, 14, 15, 17, 18, 19, 47
Alabama Passenger Fares and Charges, 88 I. C. C. 621	47
Arizona Rates, Fares, and Charges, 61 I. C. C. 572	46
Arkansas Rates and Fares, 59 I. C. C. 471	46
Ex Parte 148 (Increased Railway Rates, Fares, and Charges, 1942), 255 I. C. C. 357	10, 16, 47
Florida v. United States, 282 U. S. 194	20
Int. Com. Comm. v. Louis. & Nash. R.R., 227 U. S. 88	8
Increased Rates, 1920, 58 I. C. C. 220	46
Increases in Texas, Rates, Fares, and Charges, 253 I. C. C. 723	16, 47
Indiana Rates, Fares, and Charges, 60 I. C. C. 337	46
Intrastate Rates Within Illinois, 59 I. C. C. 350	46
Intrastate Rates Within the State of Texas, 60 I. C. C. 421	46
Iowa Passenger Fares and Charges, 60 I. C. C. 55	46
Kansas Rates, Fares, and Charges, 62 I. C. C. 440	46
Michigan Passenger Fares, 60 I. C. C. 245	46
Minnesota Fares and Charges, 59 I. C. C. 502	46
Montana Rates and Fares, 60 I. C. C. 61	46
Nebraska Rates, Fares, and Charges, 60 I. C. C. 305	46
Nevada Rates, Fares, and Charges, 60 I. C. C. 623	46
North Dakota Rates, Fares, and Charges, 61 I. C. C. 504	46
Ohio Rates, Fares, and Charges, 60 I. C. C. 78	46
Rates, Fares, and Charges of N. Y. C. R. R. Co., 59 I. C. C. 290	46
Rhode Island Commutation Fares, 253 I. C. C. 383	15, 16, 47
State of Alabama v. United States, 56 F. Supp. 478	1, 21
State of North Carolina v. United States, 56 F. Supp. 606	6
Surcharge for Sleeping Car Service in Alabama, '62 I. C. C. 153	47
Surcharge in Sleeping or Parlor Cars in Georgia, 69 I. C. C. 623	47
Surcharge for Sleeping or Parlor Cars in N. C., 102 I. C. C. 537	47
United States v. Louisiana, 290 U. S. 70	20
Utah Rates, Fares, and Charges, 60 I. C. C. 388	46
Wisconsin R. R. Comm. v. C. B. & Q. R. R. Co., 257 U. S. 563	19, 20

AUTHORITIES.

	Page
United States Code, Title 28	
Section 41 (28)	2
Sections 43-48	2
Section 45 (a)	3
Section 47 (a)	2
Section 345	2
United States Code, Title 49	
Section 1 (18-20)	9
Section 3 (1)	17
Section 13	9, 16
Section 13 (3) (4)	3, 5, 9
Section 13 (3)	25
Section 13 (4)	3, 16, 17, 25, 26
Section 15 (1)	3, 26, 27
Section 15a (2)	3, 10, 27
Section 17 (19)	2
National Transportation Policy, U. S. Code, Title 49 (54 Stat. 899)	3, 27, 28
Rule of Rate Making, U. S. Code, Title 49, Section 15a (2)	3, 27

IN THE

Supreme Court of the United States

OCTOBER TERM, 1944.

No. 574.

THE STATE OF ALABAMA, ET AL., *Appellants*,

v.

THE UNITED STATES OF AMERICA, ET AL., *Appellees*.

On Appeal From the District Court of the United States for the Western District of Kentucky, Louisville Division.

BRIEF ON BEHALF OF THE ALABAMA GREAT SOUTHERN RAILROAD COMPANY, ET AL., APPELLEES.

OPINIONS BELOW.

The opinion of the specially constituted three-judge District Court of the United States for the Western District of Kentucky, Louisville Division, entitled *State of Alabama* v. *United States*, Nos. 706-708, appears in the Record at page 1345; its findings of fact and conclusions of law

appear at pages 1341-1343; its decree thereupon entered at page 1362; and officially reported at 56 F. Supp. 478.[1]

The order of the Interstate Commerce Commission which gave rise to the suits in the District Court appears at pages 1-3 of the Record; the report of the Commission upon which said order was made appears in the Record at pages 4-39; and is officially reported at 258 I. C. C. 133, entitled Docket No. 28963, *Alabama Intrastate Fares*.[2] These two papers appear as Exhibits A and B to the Tennessee complaint, No. 707.

JURISDICTION.

The jurisdiction of this Court is invoked under Title 28, United States Code, Sections 47(a) and 345, wherein a direct appeal to this Court is authorized from a final decree of a District Court of the United States, made pursuant to the provisions of Title 28, United States Code, Sections 41(28), 43-48, and Title 49, United States Code, Section 17(19) in a case brought to enjoin, set aside, annul, or suspend an order of the Interstate Commerce Commission, other than for the payment of money.

The rail lines (appellees here), upon whose petitions the Interstate Commerce Commission instituted the three proceedings giving rise to the order here immediately involved, duly intervened as parties defendant in the District Court in the three suits therein instituted by said states and their

---

[1] The opinion below is entitled State of Alabama v. United States, but it embraces the suit of that State and its Public Service Commission, Docket No. 706, the suit of the State of Tennessee and its Railroad and Public Utilities Commission No. 707, and the suit of the Commonwealth of Kentucky and its Railroad Commission, No. 708, consolidated.

[2] The report and subsequent order of the Interstate Commerce Commission embraces four separate proceedings, three of them involving passenger fares within the States of Alabama, Tennessee, and Kentucky, and a fourth involving passenger fares within the State of North Carolina. While there were four separate proceedings, the I. C. C.'s decision was embraced in one report and order covering all four.

railroad regulatory commissions under authority of Title 28, U. S. C., Section 45a (R. 431, 542, 1136).

The final decree of the District Court was entered on the third day of August, 1944 (R. 1362). The petition for appeal was presented and allowed on the first day of September, 1944 (R. 1365, 1373). Probable jurisdiction was noted by this Court on the thirteenth day of November, 1944 (R. 1393).

THE STATUTE INVOLVED.

The statute here involved is the Interstate Commerce Act, Part I, as amended; particularly its provisions relating to prescription of reasonable rates (Title 49, U. S. C., Section 15 (1)) for the transportation of persons in the light of what is known as the "rule of rate making" (Title 49, U. S. C., Section 15a (2), 54 Stat. 912), and the "national transportation policy" (Title 49, U. S. C., notes preceding Section 1, 54 Stat. 899); and more especially involved is the application of the Federal statute (Title 49, U. S. C., Section 13 (3) (4)) to remove any unreasonable preference or prejudice as between persons in intrastate and interstate commerce, or any unreasonable discrimination against interstate commerce. These sections of the Act are set out in Appendix No. 1 to this brief.

Section 13(4) immediately involved is here quoted:

> "Whenever in any such investigation the Commission, after full hearing, finds that any such rate, fare, charge, classification, regulation, or practice causes any undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce on the one hand and interstate or foreign commerce on the other hand, or any undue, unreasonable, or unjust discrimination against interstate or foreign commerce, which is hereby forbidden and declared to be unlawful, it shall prescribe the rate, fare, or charge, or the maximum or minimum, or maximum and minimum, thereafter to be charged, and the classification, regulation, or practice thereafter to be observed, in such manner as, in its judgment, will remove such

advantage, preference, prejudice, or discrimination. Such rates, fares, charges, classifications, regulations, and practices shall be observed while in effect by the carriers parties to such proceeding affected thereby, the law of any State or the decision or order of any State authority to the contrary notwithstanding."

STATEMENT OF THE CASE.

This appeal brings up for review the decree (R. 1362) of the statutory three-judge District Court wherein the order (R. 1-3, 4-39) of the I. C. C. was upheld.

The intrastate one-way civilian[3] coach fares within the States of Alabama, Kentucky, and Tennessee were published and maintained at the rate of 1.65 cents per mile and such round-trip fares within such states were on a somewhat lower level.

Rail fares good for round-trip transportation in sleeping cars and chair cars within the States of Alabama and Tennessee were on a lower level than the 3.3-cent-per-mile rate applicable to the one-way fares in sleeping and chair cars.

Certain railroads operating within each of these three states filed their appropriate tariffs with the railroad regulatory authorities therein whereby said roads sought to increase their one-way coach fares from 1.65 cents to 2.2 cents per mile and their round-trip coach fares to 1.98 cents per mile, also increasing the round-trip fares good for transportation in sleeping cars and chair cars to 2.75 cents per mile.

The Railroad Commission of Kentucky authorized the 2.75-cent rate for sleeping and chair car round-trip transportation. Otherwise the state authorities suspended said tariffs in each state and after hearing thereon denied the

[3] Confined to "civilians" because the lower charges paid by United States Government for troop movements and the 1.25-cent fares maintained for service men and women traveling on furlough or within thirty days after their discharge from the service are not here involved.

increases sought. (R. 49-Tennessee, R. 855-Alabama, R. 1062-Kentucky.)

Thereupon, the rail lines, which had been denied the increases sought, filed their petitions with the I. C. C. under Section 13 (3) and (4) of the Interstate Commerce Act. Three separate petitions were filed. They were docketed *Alabama Intrastate Fares* No. 28963, *Kentucky Intrastate Fares* No. 29000, and *Tennessee Intrastate Fares* No. 29037.

Separate hearings were had in each of said proceedings, briefs were filed therein, and oral argument had before the I. C. C., the full bench sitting. Identical steps had been taken in respect of the intrastate civilian coach fares within the State of North Carolina. Upon refusal to sanction the increases to 2.2 cents one way and 1.98 cents round trip, a thirteenth-section petition was filed and docketed No. 29036. The North Carolina case was heard before the I. C. C. on oral argument along with the three proceedings here immediately involved.

Following said oral argument, one report was issued covering all four proceedings and entitled *Alabama Intrastate Fares,* dated March 25, 1944, and reported 258 I. C. C. 133-155 (R. 4-47).

A formal order was not entered at the time said report was issued, the I. C. C. saying that in accordance with its practice it left to the respective states the matter of adjusting the intrastate fares to conform to its findings and upon failure so to do consideration would be given to the entry of an appropriate order (p. 155, R. 39). Such readjustment not having been authorized by these states, the I. C. C. entered its order on May 8, 1944 (corrected), wherein it required the rail lines, which it had made respondents in the four thirteenth-section proceedings, to increase their intrastate fares to the level of the interstate fares for such services, which the I. C. C. had prescribed for general application interstate throughout the United States and which had been sanctioned and put into effect in forty-four of the states for intrastate application (R. 1-3).

The state authorities of Alabama, Kentucky, and Tennessee filed their petitions (R. 1, 506, 1047) in the District Court of the United States for the Western District of Kentucky, Louisville Division, wherein they respectively sought to enjoin, set aside, annul, and suspend the order of the I. C. C., dated May 8, 1944 (R. 1-3). A three-judge District Court was convened, pursuant to the provisions of the statute, at Louisville, Ky., on the twentieth day of June, 1944 (R. 419). On call of the three cases, they were tried, argued, considered, and decided as a consolidated case, and upon findings of fact and conclusions of law, together with the Court's opinion, a decree was entered on the third day of August, 1944, denying the relief the complainants sought and dismissing their three complaints, thus upholding the order of the I. C. C. assailed by the three states and their regulatory commissions (R. 1362).

The three states having made their direct appeal to this Court, the same was docketed No. 574, October Term, 1944.

The thirteenth-section proceeding involving the North Carolina fares, heretofore referred to, resulted in a similar effort on the part of the North Carolina interests to enjoin and set aside the order of the I. C. C. A three-judge District Court having dismissed its complaint and upheld the order of the I. C. C. (56 F. Supp. 606), an appeal was taken which has been docketed in this Court as No. 560, October Term, 1944.

By appropriate order, it has been directed that the appeal in No. 574 be heard upon oral argument immediately following the oral argument in No. 560 (R. 1393).

ARGUMENT.

The Ultimate Findings and Conclusions of the I. C. C. Are Grounded Upon Basic Findings of Fact Adequately Supported by Evidence.

This Court has ordered oral argument of the appeal of the States of Alabama, Kentucky, and Tennessee, and their respective railroad regulatory commissions, be had immediately following the oral argument in Docket No. 560 which covers the appeal of the State of North Carolina, et al. (R. 1393). The report and order of the I. C. C. here involved is identical with the report and order involved in the North Carolina case, for the I. C. C. decided all four thirteenth-section proceedings in one report and issued one order thereon (R. 1-3, 4-39).

Rail lines, appellees in the North Carolina case, have filed their brief in the North Carolina case, Docket No. 560. By the time the oral argument in the appeal at bar is called the Court will have heard oral argument in the North Carolina case. The issues involved in the two appeals are identical, that is to say; whether or not the lower fares required by the several states for intrastate application create preference or prejudice as between passengers in intrastate commerce, on the one hand, and in interstate commerce, on the other hand, or cause discrimination against interstate commerce.

The findings made by the I. C. C. of unlawfulness in both particulars and that the same should be removed by increasing the intrastate fares to the level of the interstate fares, which it had prescribed and which it there found to be reasonable, were challenged by North Carolina upon the ground that the record made did not lead to the conclusions reached by the I. C. C. and that its findings were not supported by substantial evidence. Appellants in the case at bar seemed to take the same position. However, upon examining the points specified by the appellants in Docket No. 574 upon which they intend to rely, we find some con-

tentions put forward in a way that prompts us to specifically deal with them. We first take them up:

In the points to be argued filed on behalf of the States of Alabama and Kentucky, numbered II, III, IV, V, VI, and VII (R. 1381), appellants call attention to facts of record which they charge "do not constitute evidence" of unreasonableness, preference, prejudice, or discrimination, as the case may be. It is true the points just enumerated do not contain the more familiar expressions that particular facts received in evidence were irrelevant, immaterial, incompetent, and inadmissible, but the bald statement is made in each instance that such facts "do not constitute evidence." In point VIII the intention of appellants is made clear. There they state that the I. C. C. had "no authority to hear or consider evidence offered at said hearings by witnesses for the rail carriers on the issue of undue or unreasonable advantage, preference, or prejudice in favor of or against any locality or person not before it." So explained, there can be no doubt that what appellants are submitting in those points to this Court is the question of whether the evidence referred to in said points was properly received, which is to say that evidence should have been rejected.

However, upon reviewing the transcripts of the evidence received by the I. C. C. (R. 56-Tenn., 547-Ala., 1140-Ky.,) in the three thirteenth-section proceedings before it, no instance will be found where the state authorities or any one, for that matter, offered objection to the relevancy or materiality or admissibility of such evidence as respondent railroads, appellees here, introduced in such proceedings. In the Alabama case, Mr. Bruce, the Transportation Director for the Alabama Public Service Commission, did make objection to certain evidence as hearsay, which was overruled. *Int. Com. Comm.* v. *Louis. & Nash. R. R.*, 227 U. S. 88, 93. We therefore dispose of points II, III, IV, V, VI, VII, and VIII that appellants (Alabama and Kentucky) make here upon the ground that not having seasonalby interposed their objections before the I. C. C. or in the lower court and

appropriately preserved the same, they may not raise such points at this time before this Court.

Points IX and X (R. 1385) to be argued by counsel for appellants, Alabama and Kentucky, seek apparently to raise the question, if we understand it correctly, that upon the I. C. C. finding a state rate lower than a reasonable rate which it had prescribed and which, if made effective intrastate, would produce increased revenue, it may not increase the intrastate fares should the railroads in the opinion of appellants have no need for increased revenue, and from that argue that no burden could be cast upon interstate commerce.

The answer to that proposition is extremely simple and has heretofore been made in our brief in the North Carolina case. It is this: The statute confides to the I. C. C. the authority and duty to determine this very question and, having determined it on substantial evidence submitted and in the light of appropriate procedural steps, no court may properly substitute its judgment in the premises for that announced by the I. C. C. Any other course would, quite obviously, defeat the purpose of the Federal statute and would tie the hands of the I. C. C. in performing the duty which the statute lays upon it. That is to say, to so regulate the matter of rates that the revenues therefrom shall be sufficient to maintain a national transportation system, adequate to meet the needs of the commerce of the United States, of the postal service, and of the national defense.

Stated somewhat differently, this point of appellants in Nos. IX and X comes to this: Unless the railroads of the country are in or upon the verge of bankruptcy, the I. C. C. may not function under the terms of Section 13, paragraphs 3 and 4. The authority and duty of the I. C. C. in the premises may not be throttled by any such narrow concept of the purpose of the Congress in enacting Section 13.

One might as well argue that the authority reposed in the I. C. C. to authorize abandonment of a line of railroad (49 U. S. C., Section 1, paragraphs 18-20) could never be

invoked and exercised unless the applicant railroad was in receivership or bankruptcy or so nearly so as to substantially amount to the same thing. The authority granted in respect of abandonments is to overcome an undue burden upon interstate commerce by reason of the continued operation of unprofitable rail lines. It is quite obvious that a railroad company may be highly prosperous and enjoy substantial income and yet have some one or more branch lines on which the traffic has completely dried up and disappeared. Surely it would be idle to argue that the I. C. C. could not authorize the abandonment of such a hopelessly unprofitable line merely because the operations of the applicant, as a whole, show an income, indeed, even a substantial income.

The question whether the present earnings of the railroads are or are not excessive is not one for determination by the courts. By the express terms of the Interstate Commerce Act (Section 15a (2)), the power and duty is imposed upon the I. C. C., in prescribing just and reasonable rates, to give due consideration to "the need of revenues sufficient to enable the carriers, under honest, economical and efficient management" to provide, in the public interest, "adequate and efficient railway transportation service." Upon consideration of the latest available reports of railroad earnings, the I C. C. has found and declared in *Ex Parte 148* that present revenues, including the revenue derived from passenger fares, are needed for such purpose and "will meet the objectives of the national transportation policy as defined in the Interstate Commerce Act, and the standards of section 15a (2) thereof" (255 I. C. C., 393). It has reaffirmed this finding at as late a date as December 12, 1944, in the fifth report in *Ex Parte 148*. Such finding by the I. C. C., supported as it is by substantial evidence, is not reviewable by the courts.

That leaves us with one point, No. I. (R. 1381), put forward by the appellants Alabama and Kentucky and the single point put forward by appellant State of Tennessee

(R. 1386), which is to the effect that the findings of the I. C. C. are not supported by evidence.

Appellants are in error on this point. We have discussed it at length in our brief in the North Carolina case, Docket No. 560, and by the time the appeal at bar comes on for argument we feel sure the I. C. C.'s findings and their support by substantial evidence will have been made abundantly clear to this Court. Hence, we do not feel justified in prolonging this brief and burdening this Court with an unnecessary repetition of what has been said in our brief in the North Carolina case, except, perhaps, to point out some particulars illustrative, at least, of specific findings and their supporting evidence in the separate records made before the I. C. C. in the Alabama, Kentucky, and Tennessee proceedings. We do that here for convenience and also submit as Appendix 2 a more detailed showing in that respect.

The interstate fares to which level the I. C. C. ordered the intrastate fares increased were duly found to be reasonable fares.

That the interstate fares are reasonable was shown at such painstaking length in our brief in the North Carolina case, Docket No. 560, pages 21-33, and Appendix C that we feel justified in referring thereto without undertaking to here even briefly summarize the elaborate consideration the I. C. C. gave to that issue.

The I. C. C.'s findings of preference and prejudice as between interstate and intrastate passengers are supported by evidence.

In its report in *Alabama Intrastate Fares, supra*, the I. C. C. makes the following findings, among others:

> "* * * Respondents in each of these States are engaged in the handling of both intrastate and interstate passengers" (258 I. C. C. p. 145, R. 24).

"Such passengers are carried on the same trains and generally in the same cars, but the interstate passengers have to pay higher fares than the intrastate passengers for corresponding distances." (Typical examples of such differences are then given) (pp. 145-146, R. 24).

"So also, illustrations are of record showing differences between the fares over interstate and intrastate routes between points in the same State" (p. 146).

"All trains operated by respondents in each of the States are available to and are used by both interstate and intrastate passengers, and the services accorded to both classes of passengers are substantially the same" (p. 146, R. 24).

"The illustrations above given are typical of a condition which exists in some degree between interstate and intrastate passengers on every mile of track operated in passenger service by each of the respondents in all four of these States, excepting only those portions of respondents' lines on which the intrastate and the interstate bases are now the same" (p. 146, R. 25).

"Both intrastate and interstate passengers travel side by side under substantially similar circumstances and conditions on practically every passenger car on every branch and main line operated by respondents in each of these four States" (p. 153, R. 36).

"The evidence in each of these proceedings, therefore, contrary to the situation dealth with in *Wisconsin R. Comm.* v. *Chicago, B. & Q. R. Co.*, 257 U. S. 563, 580, establishes a condition which is State-wide, and is similar in every respect to that before us in *Rhode Island Commutation Fares*, 253 I. C. C. 383, and in *Increases in Texas Rates, Fares, and Charges, supra*." (p. 153, R. 36).

Each and all of these findings by the I. C. C. are supported by evidence of record. That interstate and intrastate passengers use the same trains and that all trains are available to interstate and intrastate passengers alike is shown by the testimony of railroad witnesses in each case—in the *Alabama case*, No. 28963, at R. 557, 611-612, 621, 631, 668, 690; in the *Tennessee case*, No. 29037, at R. 73; in the

Kentucky case, No. 29000, at R. 1149, 1190. Typical examples of the difference in fares paid by interstate and intrastate passengers appear in Exhibits 3 (R. 335, 336), 5 (R. 338), and 8 (R. 360) in No. 29037; Exhibit 4 (R. 1279) in No. 29000; and Exhibits 3 (R. 851), 5 (R. 856), 6 (R. 856), and 10 in No. 28963. Other exhibits display typical instances of the difference in fares via interstate versus intrastate routes—for example, Exhibit 7 (R. 857) in No. 28963 and Exhibit 3 (R. 335, 336) in No. 29037.

The I. C. C.'s finding that the conditions surrounding the interstate transportation of passengers, on the one hand, and the intrastate transportation in each of the four states, on the other hand, are substantially similar is likewise supported by evidence. As illustrative, testifying in the *Tennessee case*, No. 29037, Witness Jamieson, whose experience in various positions in the operating departments of the N. C. & St. L. and L. & N. railroads covers a period of thirty-six years, testified:

> "Q. Do the transportation conditions surrounding the handling of interstate passengers to, from or through Tennessee differ in any respect from those surrounding the handling of intrastate passengers within the State?
>
> "A. They do not, no sir.
>
> "Q. Do the transportation conditions surrounding the handling of passengers in the state of Tennessee differ in any material respect from those surrounding the handling of passengers in adjoining states, such as Alabama, Kentucky, Georgia, or generally in other parts of the South?
>
> "A. No sir." (Docket No. 29037, R. 108).

To the same effect is the testimony in the *Alabama case*, No. 28963, of Witness Simpson (R. 690); and in the *Kentucky case*, No. 29000, the testimony of Witness Tolleson (R. 1190).

Appellants (Tennessee and Alabama) undertook to show at the hearings before the I. C. C. that under existing conditions coaches are frequently crowded and equipment

poor; that this situation particularly affects intrastate travel; that so-called "streamliner" trains make regular stops at the larger cities only and are not available to local intrastate travel; and that on various branch lines "mixed trains" only are operated. But upon this subject, the I. C. C. stated in its report (p. 148, R. 27):

> "* * * But the suggestion that the service accorded to intrastate passengers generally in Alabama on interstate trains is inferior to that accorded to interstate passengers is not supported by the evidence of record."

And, as to certain "mixed trains" operated by one of the railroads on its branch lines in Tennessee, the I. C. C. stated (at p. 153, R. 35):

> "Interstate as well as intrastate passengers may and do travel on the mixed trains described above, and the facilities and service furnished interstate passengers in such circumstances are the same as the facilities and service furnished intrastate passengers."

A representative of the Tennessee Commission had been instructed to travel on some of the "mixed trains" operated on branch lines of the N. C. & St. L. Ry. The witness found that on one of these trains which he rode there were two other passengers besides himself; on another three; on another "about 10"; and on another train "about 12" (No. 29037, R. 248). He was unable to say which of these other passengers were interstate passengers and which were intrastate, although the fact is that any person going by train from Chattanooga, for example, to a point located on any one of these branch lines would be an interstate passenger and would use these same trains. Two of these branch lines are themselves interstate branches, lying partly in Tennessee and partly in Alabama, but the witness had not been directed to inspect these particular branches. It was conceded that the revenue from passenger operations on all of these branch lines combined would amount to not more than $500 per month. (No. 29037, R. 250-251, 289-291.)

As to the operation of the so-called "streamliners", which operate between Chicago and adjacent territory and points in Florida, it was shown that such trains are frequently stopped at the smaller points on special occasions. It was shown further that other daily through trains are regularly operated from Chicago to the South, which trains make regular stops at numbers of points in Tennessee as well as flag stops at various other points. (No. 29037, R. 117, 118; Exhibit 11, R. 373.)

As the I. C. C. finds, all of this evidence shows at best merely that—

> "some of the trains operated in that State are superior to others, a situation which obviously is not peculiar to Tennesse alone." (258 I. C. C., p. 153, R. 35.)

It is difficult to see how evidence could more clearly show the preference to intrastate passengers and intrastate routes than those mentioned by the I. C. C. and the other illustrations in the record. Appellants, however, contend that the evidence is insufficient in that no passenger, or prospective passenger, complained of the differences in fares, and no actual damage to interstate passengers was shown specifically.

It seems to us that the damage to the interstate passengers and the interstate routes is obvious, and that it would have been a waste of time and effort to have had interstate passengers or prospective passengers at the hearings to testify to the obvious. The following language of the I. C. C. at page 389 of its report in *Rhode Island Commutation Fares*, 253 I. C. C. 383, is to the point:

> "The foregoing illustrations are typical of others where, for the same or even shorter distances, interstate commuters now pay more than intrastate commuters traveling on the same kind of ticket subject to like restrictions. In other words, the interstate and intrastate commuters ride on the same train, yet for identically the same service the interstate passenger is required to pay a higher rate of fare than the intra-

state passenger. A little deductive reasoning is all that is required to spell out of those facts the undue prejudice and disadvantage and the undue preference and advantage forbidden by section 13(4) of the act.

"No one contends that the economic condition of the average intrastate commuter is any different from that of the interstate commuter. Plain justice demands, therefore, that the 10 per cent increase be paid by both or by neither. In view of our findings in Ex Parte No. 148 in respect of the need for an increase in the interstate fares, and in the light of this record, it is clear that the only reasonable and lawful course to pursue is to require a like increase in these intrastate fares."

Similar findings were made in *Increases in Texas Rates, Fares, and Charges*, 253 I. C. C. 723. Both the *Rhode Island case* and the *Texas case*, like the instant proceedings, grew out of the denial by state authorities of the *Ex Parte 148* increases; and in both the I. C. C. ordered removal of the undue preference, prejudice, and discrimination thereby created.

We also cite in Appendix No. 3 hereto twenty or more cases in which the I. C. C. has found undue and unlawful prejudice and preference between interstate and intrastate passengers under Section 13 of the Act, upon evidence substantially similar to the evidence here. In practically none of these cases was there any testimony from passengers or prospective passengers purporting to show direct pecuniary loss or damage to them.

Here we have a case in which the intrastate fares in Alabama, Tennessee, and Kentucky are lower than the corresponding interstate fares in those states, as well as other Southern states, some of which are immediately adjacent to the three states named. The fact that this difference is material and without justification, that it affects a large number of interstate passengers, and that the prejudice to such passengers is obvious, makes out a case under Section 13(4) of the Act of preference and prejudice as between persons in intrastate and interstate commerce. It needs no

argument to show that to charge two passengers, who may be riding in the same train and, perhaps, in the same seat, different fares for the same service amounts to unjust discrimination.

It can not be doubted that the power of the I. C. C. under Section 13(4) is broader than it is under Section 3(1). It is to be noted that throughout Section 3(1) the word "particular" appears. It is made unlawful for any common carrier to make, give, or cause any undue or unreasonable preference or advantage to "any *particular* person, company, etc." In Section 13(4), on the other hand, the word "particular" does not appear. The prohibition there is against *any* undue or unreasonable advantage, preference, or prejudice "as between persons or localities in intrastate commerce on the one hand and interstate or foreign commerce on the other hand."

The broader scope of Section 13(4) is also indicated by the fact that its purpose is to foster and protect interstate commerce and the national transportation system, whereas the purpose of Section 3(1) is to prevent undue preference and prejudice as between individual shippers or passengers. To hold that Section 3(1) and that portion of Section 13(4) which deals with preference and prejudice as between persons and localities mean precisely the same thing would be equivalent to saying that Congress had indulged in needless repetition and that the differences in the language used mean nothing.

The evidence supports the I. C. C.'s findings of undue and unlawful discrimination against interstate commerce.

At page 154 of its report, the I. C. C. makes the following finding:

> "Respondents' revenues under the lower intrastate fares are less by at least $725,000 per annum in Alabama, $500,000 in Kentucky, $525,000 in North Carolina, and $525,000 in Tennessee than they would be if those fares were increased to the level of the corresponding

interstate fares, and traffic moving under these lower intrastate fares is not contributing its fair share of the revenues required to enable respondents to render adequate and efficient transportation service." (R. 38).

This finding of the I. C. C. is supported by evidence of record.

Increased intrastate fares in Alabama were published to become effective December 1, 1942. Exhibit 17 (R. 866), filed by Witness Tassin in Docket No. 28963, shows that because of the failure of the Alabama Commission to permit the fare of 2.2 cents per mile to become effective, for the four-month period ending March 31, 1943, the loss of revenue to the carriers operating in Alabama was $250,166. On a yearly basis this loss would amount to $750,498 (Docket No. 28963, R. 868, 708). Exhibit 6 (R. 1282), filed by the same witness in the Kentucky case, shows that the revenue that would have accrued to the railroads in Kentucky, had the passenger business moved within the state on the same fares as interstate, would have been increased, for the seven months ending June 30, 1943, by $306,951—or at a yearly rate of $526,200 (Docket No. 29000, R. 1200, 1284). Statement 1 of Exhibit 6 (R. 339), filed by the same witness in the Tennessee case, shows the actual revenue loss sustained by the Tennessee railroads, individually and collectively, by reason of the Tennessee Commission's refusal to authorize an increase of intrastate fares to the interstate level For the twelve-month period from October 1, 1942, to September 30, 1943, the actual revenue loss was $556,280. For the N. C. & St. L. the revenue loss for a twelve-month period was $240,215, for the Southern Ry. $183,925, and for the L. & N. R. R. $115,718 (Docket No. 29037, R. 122, 341). The combined loss of revenue to the railroads in the three states, together with the State of North Carolina, was at an annual rate of *approximately $2,400,000 per annum* (258 I. C. C. 146-147, R. 25).

At page 154 of its report, the I. C. C. says (R. 36):

"The revenue lost to respondents in each of these States by reason of the lower intrastate fares is substantial, and the transportation conditions under which the intrastate service is performed do not differ materially from those under which the interstate service is performed. Section 13(4) of the act empowers us to increase intrastate rates or fares so that the intrastate traffic may produce its fair share of the earnings required by the respondent carriers to enable them to provide adequate and efficient railway transportation service, both interstate and intrastate. *United States* v. *Louisiana*, *supra*, page 75; *Florida* v. *United States*, 292 U. S. 1; *Illinois Commerce Comm.* v. *United States*, 292 U. S. 474. 'The effect of maintaining a lower rate, intrastate, than the reasonable interstate rate is necessarily discriminatory wherever the two classes traffic, inextricably intermingled, are carried * * * under substantially the same conditions.' *Illinois Commerce Comm.* v. *United States*, *supra*, page 485."

It is further stated in the report, at page 147 (R. 25, 26):

"The intrastate fares in each of the States may be used to defeat or break down the interstate fares, and thereby reduce the revenues on interstate traffic. Thus, passengers destined to points outside the respective States may now purchase intrastate tickets to points on or near the State line and either rebuy tickets or pay cash for the remainder of the journey."

In *Wisconsin R. R. Comm.* v. *C., B. & Q. R. R. Co.*, 257 U. S. 563, 585-586, the Supreme Court stated:

"* * * Twenty per cent. of the gross freight receipts of the railroads of the country are from intrastate traffic, and fifty per cent. of the passenger receipts. The ratio of the gross intrastate revenue to the interstate revenue is a little less than one to three. If the rates, on which such receipts are based, are to be fixed at a substantially lower level than in interstate traffic, the share which the intrastate traffic will contribute will be proportionately less. If the railways are to earn

a fixed net percentage of income, the lower the intrastate rates, the higher the interstate rates may have to be. *The effective operation of the act will reasonably and justly require that intrastate traffic should pay a fair proportionate share of the cost of maintaining an adequate railway system.*" (Emphasis supplied.)

In *Florida* v. *United States*, 282 U. S. 194, the Court said (at p. 211):

> "As intrastate rates and the income from them must play a most important part in maintaining such a system, the effective operation of the act requires that intrastate traffic *should pay 'a fair proportionate share' of the cost of maintenance.* And if there is interference with the accomplishment of the purpose of the Congress because of a disparity of intrastate rates, as compared with interstate rates, the Commission is authorized to end the disparity by directly removing it." (Emphasis supplied.)

Again, in *United States* v. *Louisiana*, 290 U. S. 70, 75, the Supreme Court stated:

> "• • • So construed, section 13(4) confers on the Commission the power to raise intrastate rates so that the intrastate traffic may produce its fair share of the earnings required to meet maintenance and operating costs and to yield a fair return on the value of property devoted to the transportation service, both interstate and intrastate."

The record here shows, and the I. C. C. finds, that the intrastate traffic in the three states of Alabama, Tennessee, and Kentucky was failing to contribute its fair proportionate share of the revenue needed for the maintenance of an adequate transportation system—in Alabama at the rate of $725,000 per annum; in Kentucky at the rate of over $500,000; and in Tennessee at the rate of over $525,000 per annum.

CONCLUSION.

The District Court, upon concluding that there was a clear case of discrimination against interstate commerce, saw no reason to concern itself with the finding that the I. C. C. had made in respect of preference of intrastate travelers as contrasted with prejudice against interstate travelers. That is as we read the opinion which the Court filed (56 F. Supp., at 487, R. 1346, 1358).

However, it will be noted that the Court in its finding numbered 4 (R. 1342, 1343) specifically recited that the I. C. C. had found that the interstate rates were reasonable, that the intrastate rates in these states were lower, that the conditions affecting transportation under both sets of rates were substantially similar, that both classes of passengers travel in the same trains and generally in the same cars, but that the interstate passengers paid a higher fare than the intrastate passenger. Then followed the finding with respect to the discrimination against interstate commerce, and that was followed by finding numbered 6 (R. 1343) in which the District Court found as facts: "said findings of the I. C. C. . . . are supported by substantial evidence." That being so, we feel justified in saying here that while the District Court in the appeal at bar may have cut its opinion short in this particular, nevertheless its findings support the I. C. C. in that the I. C. C.'s findings were made and supported by substantial evidence. Undoubtedly the appeal of Alabama and Kentucky takes this view of the record of the Court below, though it may be the appeal of the State of Tennessee differs for it would seem to confine its contention to the lack of evidence supporting the finding of discrimination against interstate commerce.

Be that as it may, both phases of the case have been fully covered in our argument here filed in the North Carolina case, Docket No. 560.

Directing attention, however, only to the sole question of discrimination against interstate commerce, it is enough to say that the finding on that point, supported as it is by

substantial evidence, supports the District Court's decree and requires its affirmance here. The District Court stressed this (R. 1359). Over half a million dollars a year in each of two of the states and nearly three-quarters of a million dollars in the third produces the substantial total of almost $2,000,000 per annum, merely to state the loss conservatively in round figures.

It is indeed a rare situation when the regulatory authorities of the three states, Alabama, Kentucky, and Tennessee, reject the efforts of certain railroads operating within their states, appellees here, to effect certain increases in their passenger fares in order to harmonize them with the prevailing interstate level and that generally applicable in all other states, and yet, at the same time, these four states do not deny to certain other railroads operating within their borders passenger fares on the level appellee roads sought authority from such states to maintain. Such roads as the Illinois Central, Gulf, Mobile & Ohio, and St. Louis-San Francisco operate in Alabama, and the first two operate in Alabama, Kentucky, and Tennessee and the Chesapeake & Ohio in Kentucky. Those railroads have all along had in effect on their lines intrastate in those states passenger fares on the very level to which the appellee railroads here sought authority from those states to increase their passenger fares. In some instances they were reduced to meet competition of the lower fares these states required of certain other railroads. There is no suggestion of justification of this difference in treatment in respect of the interested railroads, or from the standpoint of the traveling public using the services of both sets of railroads—those which had the higher fares or those which were refused permission to increase their fares to a like level.

We submit that in the *Alabama case*, Docket 28963, the *Tennessee case*, Docket 29037, and in the *Kentucky case*, Docket 29000, (258 I. C. C. 133) the Interstate Commerce Commission made the essential basic findings to support

the ultimate conclusions it reached and upon which the order herein attacked was entered. Those findings and the ultimate conclusions and the order entered thereon are supported in the record by substantial evidence. All proper and appropriate procedural steps were taken, including notice, hearing, receipt of material evidence, briefs, and oral argument on behalf of the interested parties, consideration of the record so made and the report and order issued in due season, all in keeping with the provisions of the applicable statutes. The District Court correctly so held and committed no error in refusing the injunction and dismissing the suits filed by the States of Alabama, Tennessee, and Kentucky and their respective railroad regulatory commissions. The decree of the District Court should be affirmed.

Respectfully submitted,

W. L. GRUBBS,
E. A. SMITH,
Y. D. LOTT,
H. L. WALKER,
L. L. OLIVER,
F. W. GWATHMEY,
CHARLES CLARK,
Attorneys for Alabama Great Southern Railroad Company, et al., Appellees.

CERTIFICATE OF SERVICE.

I certify that I am of Counsel for the railroads who are appellees in Nos. 560, 561, 574, and 592, and have this day served the foregoing brief, and the appendices thereto, by depositing copies of the same in the United States mail, properly stamped with first-class postage and properly addressed to the following:

J. C. B. Ehringhaus, Wachovia Bank Bldg., Raleigh, N. C.

F. C. Hillyer, 227 West Forsyth St., Jacksonville 2, Fla.
Attorneys of record for appellants in Docket No. 560.

M. D. Miller, 5319 Federal Office Bldg., 2nd & D Sts., S. W., Washington 25, D. C.
Attorney of record for appellants in No. 561 and No.

Forman Smith, Asst. Attorney General, State of Alabama, Montgomery, Ala.

Leon Jourolman, Commissioner, Railroad & Public Utilities Commission, Nashville 3, Tenn.

J. E. Marks, 145 E. High St., Lexington, Ky.
Attorneys of record for appellants in No. 574.

J. Stanley Payne, Asst. Chief Counsel, Interstate Commerce Commission, Washington, 25, D. C.

Allen Crenshaw, Attorney, Interstate Commerce Commission, Washington 25, D. C.
Attorneys for appellee, I. C. C. in Nos. 560, 561, 574 and 592.

This day of April, 1945.

CHARLES CLARK.
c/o Southern Railway Bldg.,
15th and K Streets,
Washington, D. C.

APPENDIX NO. 1.

CERTAIN SECTIONS OF THE INTERSTATE COMMERCE ACT, PART I.

U. S. Code, Title 49, Section 13(3):

Whenever in any investigation under the provisions of this part, or in any investigation instituted upon petition of the carrier concerned, which petition is hereby authorized to be filed, there shall be brought in issue any rate, fare, charge, classification, regulation, or practice, made or imposed by authority of any State, or initiated by the President during the period of Federal control, the Commission, before proceeding to hear and dispose of such issue, shall cause the State or States interested to be notified of the proceeding. The Commission may confer with the authorities of any State having regulatory jurisdiction over the class of persons and corporations subject to this part or part III with respect to the relationship between rate structures and practices of carriers subject to the jurisdiction of such State bodies and of the Commission; and to that end is authorized and empowered, under rules to be prescribed by it, and which may be modified from time to time, to hold joint hearing with any such State regulating bodies on any matters wherein the Commission is empowered to act and where the rate-making authority of a State is or may be affected by the action taken by the Commission. The Commission is also authorized to avail itself of the cooperation, services, records, and facilities of such State authorities in the enforcement of any provision of this part or part III.

U. S. Code, Title 49, Section 13(4):

Whenever in any such investigation the Commission, after full hearing, finds that any such rate, fare, charge, classification, regulation, or practice causes any undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce on the

one hand and interstate or foreign commerce on the other hand, or any undue, unreasonable, or unjust discrimination against interstate or foreign commerce, which is hereby forbidden and declared to be unlawful, it shall prescribe the rate, fare, or charge, or the maximum or minimum, or maximum and minimum, thereafter to be charged, and the classification, regulation, or practice thereafter to be observed, in such manner as, in its judgment, will remove such advantage, preference, prejudice, or discrimination. Such rates, fares, charges, classifications, regulations, and practices shall be observed while in effect by the carriers parties to such proceeding affected thereby, the law of any State or the decision or order of any State authority to the contrary notwithstanding.

U. S. Code, Title 49, Section 15(1):

That whenever, after full hearing, upon a complaint made as provided in section 13 of this part, or after full hearing under an order for investigation and hearing made by the Commission on its own initiative, either in extension of any pending complaint or without any complaint whatever, the Commission shall be of opinion that any individual or joint rate, fare, or charge whatsoever demanded, charged, or collected by any common carrier or carriers subject to this part for the transportation of persons or property as defined in the first section of this part, or that any individual or joint classification, regulation, or practice whatsoever of such carrier or carriers subject to the provisions of this part, is or will be unjust or unreasonable or unjustly discriminatory or unduly preferential or prejudicial, or otherwise in violation of any of the provisions of this part, the Commission is hereby authorized and empowered to determine and prescribe what will be the just and reasonable individual or joint rate, fare, or charge, or rates, fares, or charges, to be thereafter observed in such case, or the maximum or minimum, or maximum and minimum, to be charged, and what individual or joint classifica-

tion, regulation, or practice is or will be just, fair, and reasonable, to be thereafter followed, and to make an order that the carrier or carriers shall cease and desist from such violation to the extent to which the Commission finds that the same does or will exist, and shall not thereafter publish, demand, or collect any rate, fare, or charge for such transportation other than the rate, fare, or charge so prescribed, or in excess of the maximum or less than the minimum so prescribed, as the case may be, and shall adopt the classification and shall conform to and observe the regulation or practice so prescribed.

U. S. Code, Title 49, Section 15a(2):

In the exercise of its power to prescribe just and reasonable rates the Commission shall give due consideration, among other factors, to the effect of rates on the movement of traffic by the carrier or carriers for which the rates are prescribed; to the need, in the public interest, of adequate and efficient railway transportation service at the lowest cost consistent with the furnishing of such service; and to the need of revenues sufficient to enable the carriers, under honest, economical, and efficient management to provide such service.

U. S. Code, Title 49, notes preceding Section 1:

It is hereby declared to be the national transportation policy of the Congress to provide for fair and impartial regulation of all modes of transportation subject to the provisions of this Act, so administered as to recognize and preserve the inherent advantages of each; to promote safe, adequate, economical, and efficient service and foster sound economic conditions in transportation and among the several carriers; to encourage the establishment and maintenance of reasonable charges for transportation services, without unjust discriminations, undue preferences or advantages, or unfair or destructive competitive practices; to

cooperate with the several States and the duly authorized officials thereof; and to encourage fair wages and equitable working conditions;—all to the end of developing, coordinating, and preserving a national transportation system by water, highway, and rail, as well as other means adequate to meet the needs of the commerce of the United States, of the Postal Service, and of the national defense. All of the provisions of this Act shall be administered and enforced with a view to carrying out the above declaration of policy.

APPENDIX NO. 2.

FINDINGS OF THE INTERSTATE COMMERCE COMMISSION AND EVIDENCE FROM THE RECORD IN THE ALABAMA CASE DOCKET 28963, THE KENTUCKY CASE DOCKET 29000, AND THE TENNESSEE CASE DOCKET 29037 SUPPORTING SUCH FINDINGS.

FINDINGS, 258 I. C. C., 146, R. 25:

All trains are available to and are used by both interstate and intrastate passengers and services accorded both classes of passengers are substantially the same.

SUPPORTING EVIDENCE—ALABAMA:

Passenger trains in Alabama carry both interstate and intrastate passengers; both interstate and intrastate passengers frequently ride on the same trains and in the same coaches (Aiken, R. 557, 611, 612).

Intrastate passengers in Alabama have opportunity to use streamline trains and other through trains which have air conditioned equipment; and they get exactly the same service as the interstate passengers (Aiken, R. 611, 612).

Interstate and intrastate passengers ride on all of the trains that the Central of Georgia operates between points in Alabama (Stewart, R. 621).

No reason why the coach fares in Alabama should be less than the coach fares between points in Alabama and points in adjoining states (Stewart, R. 621).

On trains operated by the Seaboard the interstate and intrastate passengers are furnished the same services and conveniences (Makinson, R. 631).

A. C. L. train operating in Alabama handles both interstate and intrastate passengers. (Lynch, R. 645).

Intrastate passengers in Alabama have the same facilities as interstate passeners (Geil, R. 668).

There is no difference between the service which passengers traveling in interstate commerce receive than that which is given intrastate passengers in Alabama (Simpson, R. 686).

The trains operated by Southern Railway System in Alabama handle both interstate and intrastate passengers (Simpson, R. 690).

The operating conditions in Alabama are similar to those in the other states in which Southern Railway System lines and other railroads operate (Simpson, R. 690).

Intrastate passenger in Alabama has same opportunity to board "streamliners" as an interstate passenger (Johnson, R. 808, 809).

The "South Wind," a streamliner, operates from Chicago to Miami, and is handled over the Coast Line in Alabama. Seats are available to intrastate passengers as well as interstate passengers. The intrastate passenger pays 1.65 cents per mile, whereas the interstate passenger pays 2.2 cents per mile. (Lynch, R. 647-649.)

SUPPORTING EVIDENCE—KENTUCKY.

Passenger trains in Kentucky carry both interstate and intrastate passengers who frequently ride on same trains and in same coaches. (Aiken, R. 1149).

It is possible for both interstate and intrastate passengers to ride on mixed trains operated by Illinois Central in Kentucky (Tucker, R. 1183).

All passenger trains operated by Southern Railway System lines in Kentucky handle both interstate and intrastate passengers. There is no difference in the service afforded by the Southern Railway System lines to interstate and intrastate passengers. This is likewise true as to all of the railroads operating in the State of Kentucky. (Tolleson, R. 1190.)

Operating conditions in Kentucky are similar to those in other states in the South (Tolleson, R. 1190).

SUPPORTING EVIDENCE—TENNESSEE.

There are no differences in the surrounding circumstances pertaining to interstate and intrastate transportation (Gaffney, R. 73, 74).

The railroads operating in Tennessee have spent large sums of money in the purchase of new equipment and, in the modernization of coaches. All of these are available to Tennessee intrastate passengers as well as interstate passengers, and the interstate passenger pays on basis of 2.2 cents per mile, whereas the intrastate passenger pays but 1.65 cents. (Gaffney, R. 87.)

Interstate and intrastate passengers in Tennessee are handled in the same trains and receive the same service (Jameson, R. 73).

The transportation conditions surrounding the handling of passengers in the State of Tennessee do not differ in any material respect from those surrounding the handling of passengers in adjoining states, such as Alabama, Kentucky, and Georgia, or generally in other parts of the South. However, on the N. C. & St. L., certain operating difficulties are encountered on account of the mountain country. (Jameson, R. 107, 108; Gaffney, R. 73, 74.)

The streamliner winter trains, which operate on alternate days and via different routes from Chicago and points in that territory to Florida, make regular stops at the larger cities alone when passing through Tennessee.

These trains are frequently stopped at smaller cities on special occasions; and the same thing is true of such daily through trains from Chicago as the "Dixie Flyer" and "Dixie Limited" which also make stops at points between Nashville and Chattanooga, such as Tullahoma and Decherd, as well as flag stops at various other points (Jameson, R. 116-118; Exhibit 11, R. 372).

FINDINGS, 258 I. C. C., 145-146, (R. 24):

Interstate and intrastate passengers are carried on the same trains and generally in the same cars, and interstate passengers have to pay higher fares than intrastate ones for corresponding distances.

Columbus, Miss. to Anniston, Ala. 186 miles—fare $4.11
Sheffield, Ala. to Anniston, Ala. 193 miles—fare 3.30

Difference (Exhibit No. 3, R. 851) ..... $ .81

Lexington, Ky. to Columbus, Ohio, 197 miles—fare $4.44
Lexington, Ky. to Owensboro, Ky. 199 miles—fare 3.35

Difference (Exhibit No. 4, R. 1280) $1.09

Chattanooga, Tenn. to Asheville, N. C. 240 miles —fare $5.32
Chattanooga, Tenn. to Bristol, Tenn. 242 miles—fare 4.05

Difference (Exhibit No. 3, R. 335) $1.27

SUPPORTING EVIDENCE—ALABAMA:

Exhibit 10, shows the manner in which the lower basis of fares intrastate in Alabama results in discrimination against interstate passengers. It shows that from Thomasville, Ga., to Ozark, Ala., the interstate passenger,

for a distance of 118.8 miles, pays $2.64. From Dothan, Ala., to Montgomery, Ala., a distance of 119 miles, the intrastate passenger pays $2.00 The interstate passenger travels two-tenths of a mile less than the intrastate passenger and yet pays 64 cents more. Both the interstate and the intrastate passenger have the same trains available, and the same equipment available. (Lynch, R. 644; Exhibit 10, R. 860.)

From Montgomery, Ala., to Atlanta, Ga., for a distance of 175 miles, the interstate passenger pays $3.85, and from Montgomery, Ala., to Mobile, Ala., for a distance of 178 miles, the intrastate passenger pays $2.95, or 90 cents less for a greater distance of 3 miles.

From Montgomery, Ala., to Atlanta, Ga., for a distance of 175 miles, the interstate passenger pays $3.85, whereas an intrastate passenger traveling from Montgomery, Ala., to Decatur, Ala., a distance of 183 miles, pays $3.05, or 80 cents less than the interstate passenger (Higgins, R. 659; Exhibit 11, R. 860).

There is no reason why the intrastate fares in Alabama should be less than the interstate coach fare from a point in Alabama to a point in an adjoining state (Higgins, R. 660).

SUPPORTING EVIDENCE—KENTUCKY.

The fares paid by passengers traveling within the State of Kentucky are lower than those paid by interstate passengers traveling from a point within Kentucky to a point outside of that state for substantially similar distances. The following are examples: The interstate fare on basis of 2.2 cents per mile from Lexington, Ky., to Columbus, Ohio, a distance of 197 miles, is $4.44, whereas the intrastate fare on basis of 1.65 cents per mile from Lexington, Ky., to Owensboro, Ky., a distance of 199 miles, or 2 miles greater is but $3.35, a difference of $1.09; from Lexington, Ky., to

Lima, Ohio, for a distance of 209 miles, the interstate fare is $4.66 whereas from Lexington, Ky., to Lynch Ky., a distance of 208 miles, the intrastate fare is $3.50, or $1.16 less; from Owensboro, Ky., to St. Louis, Mo., a distance of 207 miles, the interstate fare is $4.91, whereas from Owensboro, Ky., to Winchester, Ky., a distance of 217 miles, the intrastate fare is $3.70 or $1.21 less; from Bowling Green, Ky., to Chattanooga, Tenn., for a distance of 225 miles, the interstate fare is $4.99, whereas from Bowling Green, Ky., to Covington, Ky.; for the same distance, the intrastate fare is $5.75, or $1.24 less. (Aiken, R. 1154; Exhibit 4, R. 1280.)

From Fulton, Ky., to Grenada, Miss., a distance of 221.6 miles, the interstate passenger pays $8.95, whereas from Fulton, Ky., to Cecilia, Ky., a distance of 223.4 miles, the intrastate passenger pays $7.43 or $1.52 less (Tucker, R. 1173, Exhibit 5, R. 1281).

SUPPORTING EVIDENCE—TENNESSEE.

Passenger trains operated in the State of Tennessee carry both interstate and intrastate passengers who frequently ride in the same trains and in the same coaches. There is no reason which would justify the maintenance of a fare of only 1.65 cents per mile for intrastate coach transportation within the State of Tennessee when an interstate passenger traveling to or from points within the state is required to pay 2.2 cents per mile. (Gaffney, R. 73, 74; 98, 99.)

Examples of fares paid by intrastate passengers contrasted with those paid by interstate passengers for approximately the same distances, which illustrate the discrimination against interstate passengers, are shown in Exhibits 3 and 8 (R. 335, 360). Following are a few taken from Exhibit 3, R. 335, 336:

From	To	Distance	Fare One Way Per Mile	Fare One Way Coach Fare	
Nashville, Tenn.	Stevenson, Ala.	113.1	2.2	2.60	Interstate
Nashville, Tenn.	McKenzie, Tenn.	117.1	1.65	2.00	Intrastate
	Difference			.60	
Chattanooga, Tenn.	Asheville, N. C.	240.3	2.2	5.32	Interstate
Chattanooga, Tenn.	Bristol, Tenn.	241.9	1.65	4.05	Intrastate
	Difference			1.27	
Harriman, Tenn.	Alexander, N. C.	168.9	2.2	3.78	Interstate
Harriman, Tenn.	Nashville, Tenn.	165.6	1.65	2.75	Intrastate
	Difference			1.03	
Memphis, Tenn.	Knoxville, Tenn.	426.1	2.2a	9.39	Interstate
Memphis, Tenn.	Knoxville, Tenn.	455.9	1.65b	7.10	Intrastate
	Difference			2.29	
Nashville, Tenn.	Barnesville, Ga.	348.9	2.2	7.73	Interstate
Nashville, Tenn.	Bristol, Tenn.	347.8	1.65	6.65	Intrastate
	Difference			1.08	

a—Via Sou. Ry. direct.
b—Via N. C. & St. L., Nashville-T.C.-Harriman-Sou. Ry.

Passengers travel from time to time between the origins and destinations listed on Exhibit 8. People are traveling generally in Southern territory. (Aiken, R. 201-203; Exhibit 8, R. 360.)

There is a discrimination against interstate passengers when they have to pay a higher fare than the intrastate passenger when they ride in the same train and for the same mileage (Gaffney, R. 186, 187; Aiken, R. 223).

Business concerns with traveling men who pay the intrastate fare and which compete the business firms with traveling men who pay the interstate fare have an advantage (Aiken, R. 223, 224).

The intrastate passenger traveling over the branch lines in Tennessee gets exactly the same service as the interstate passenger (Coke, R. 251).

FINDINGS, 258 I. C. C., R. 24, 25:

Differences between fares over interstate and intrastate routes between points in state:

Piedmont, Ala. and Hurtsboro, Ala.	
Interstate route—235.9 miles fare	*$5.21*
Intrastate route—236.9 miles—fare	*4.05*
Difference (Exhibit 8, R. 858)	*$1.16*
Memphis, Tenn. and Knoxville, Tenn	
Interstate route— fare	*$9.39*
Intrastate route (longer)	*7.10*
Difference (Exhibit 3, R. 336)	*$2.29*

SUPPORTING EVIDENCE—ALABAMA:

The coach fares between two points in Alabama, one over an intrastate route and one over an interstate route, are different. Between Piedmont, Ala., and Hurtsboro, Ala., via the interstate route through Atlanta, Ga., the passenger now pays $5.21. Over the intrastate route through Birmingham he pays $4.05, a difference of $1.16, and there is only one mile difference in distance. (Makinson, R. 631; Exhibit 8, R. 858.)

From Opelika, Ala., to Troy, Ala., a passenger who travels via the Central of Georgia Railway would naturally have to go interstate via that line, a distance of 113.2 miles, with a coach fare of $2.53. An intrastate passenger traveling between those points, a distance of 117.4, or for a greater distance of 4.2 miles over the interstate route, pays a coach fare of $1.95, or 58 cents less than the fare via the interstate route.

From Birmingham, Ala., to Hurtsboro, Ala., via the interstate route the fare is $4.11, whereas via the intrastate route the fare is $2.65, or a difference of $1.46.

From Birmingham, Ala., to Seale, Ala., via the interstate route the fare is $3.78, and via the intrastate route it is $2.90, or 88 cents less (Stewart, R. 618; Exhibit 6, R. 856).

SUPPORTING EVIDENCE—TENNESSEE:

Example 7 in Exhibit 3 shows the opportunity for a passenger to obtain a lower fare by using an intrastate route than if he used the interstate route. From Jackson, Tenn., to Knoxville, Tenn., the fare via the intrastate route is $6.95 and via the interstate route it is $8.18, or a difference of $1.23. (R. 335.)

Example 8 in Exhibit 3 covers a movement from Memphis, Tenn., to Knoxville, Tenn. A passenger could apply at the ticket office of the N. C. & St. L. Ry. in Memphis for a ticket from Memphis to Knoxville and ride the N. C. & St. L. to Nashville, transfer to the Tennessee Central and ride to Harriman and thence Southern Railway to destination. That ticket would be sold to him at the rate of $7.10, whereas if he was going direct over the Southern Railway, which is the short line from Memphis to Knoxville, or coming via the N. C. & St. L. via Nashville to Chattanooga, thence Southern Railway, it would cost him $9.39, a difference of $2.29. (R. 336.)

Passengers actually use the intrastate routes (Gaffney, R. 79).

FINDING, 258 I. C. C., 147 (R. 25, 26):

Interstate fares may be used to defeat and break down the interstate fares, and thereby reduce the revenues on interstate traffic.

Passengers destined to points outside of the respective states may now purchase intrastate tickets to points on or near the state line and either rebuy tickets or pay cash for the remainder of the journey.

Respondents are convinced that this practice is common; its elimination would have an important effect upon additional revenues which they would receive if the intrastate fares were on the same level as the interstate fares.

SUPPORTING EVIDENCE—ALABAMA:

With present difference between intrastate and interstate fares it is possible for a passenger to defeat interstate fares to and from points in Alabama by buying intrastate ticket to the point nearest the state line at which trains are regularly scheduled to stop and rebuying therefrom to interstate destinations (Aiken, R. 560, 597; Exhibit 2, R. 848).

It is common knowledge advantage has been taken by interstate passengers buying tickets at the lower intrastate fare to some points and rebuying from such points, or paying cash fares on trains to destinations. The condition which permits this does exist but it is difficult to police. (Aiken, R. 561, 594, 595.)

Our agents in Cincinnati, Ohio, have asked if they could issue a ticket to Jacksonville, Fla., at the interstate fare, so that the passenger could use the through service, and if he could issue another ticket going to Miami at the coach fare, and we have told them definitely and positively it could not be done. The same thing is true in Atlanta and other points on Southern Railway System. What actually happens is this: A passenger in Cincinnati wants to go to Miami, Fla., and has has a trunk he desires to ship through. If he bought a split ticket from Cincinnati to Jacksonville and a ticket from Jacksonville to Miami, he could check his baggage through and defeat the interstate rate from Cincinnati to Miami. (Aiken, R. 561, 562.)

Exhibit 3 (R. 851) was filed by Witness Aiken to illustrate the present lower coach fares in Alabama result in dis-

crimination against interstate commerce. From Tuscaloosa, Ala., to Laurel, Miss., a distance of 154 miles, the fare is $3.44, whereas the intrastate fare from Tuscaloosa, Ala., to Valley Head, Ala., a distance of 159 miles or four miles greater, is but $2.65, a difference of 79 cents (R. 563, 564).

From Birmingham, Ala., to Cordele, Ga., a distance of 268 miles, the interstate fare is $5.90, whereas from Birmingham, Ala., to Mobile, Ala., a distance of 266 miles, the fare is $4.45, or a difference of $1.45 in favor of the intrastate passenger.

From Anniston, Ala., to Griffin, Ga., a distance of 146 miles, the fare is $3.23, while from Anniston, Ala., to Akron, Ala., a distance of 147 miles, the intrastate fare is $2.50, or a difference of 73 cents in favor of the intrastate passenger (Aiken, R. 563, 564; Exhibit 3, R. 851).

Due to lower intrastate fares in Alabama, passengers actually defeat the through published interstate fares by buying at the intrastate rate tickets for the portion of their journey between points in Alabama (Stewart, R. 628).

A passenger can buy a ticket from Birmingham, Ala., to Phenix City, Ala., for $2.50 and pay the conductor a fare of 11 cents from Phenix City into Columbus, Ga., total, $2.61. The interstate fare from Birmingham, Ala., to Columbus, Ga., is $3.34. It will thus be seen that the passenger saves 73 cents. (Stewart, R. 617; Exhibit 5, R. 856.)

Interstate coach passengers traveling to and from points in Alabama have been defeating the through interstate fares by purchasing tickets at a fare of 1.65 cents per mile for a portion of their journey through Alabama. My own observation of refund claims and baggage claims clearly indicates it is being done. (Makinson, R. 629, 630, 639; Exhibit 8, R. 858.)

Sheet 3 of Exhibit 8 shows how two passengers leaving Birmingham, Ala., in the same train, occupying seats, maybe beside each other, will pay different rates per mile for that portion of the trip within the State of Alabama. The interstate passenger from Birmingham to Cedartown, Ga., pays an interstate fare of $2.35.

A passenger on the same train from Birmingham to Borden Springs, Ala., pays $1.55. The interstate passenger pays $2.02 for that portion of his journey between Birmingham and Borden Springs, while the interstate passenger pays $1.55 for the same distance, a difference of 47 cents in favor of the intrastate passenger. (Makinson, R. 631; Exhibit 8, R. 859.)

Exhibit 9 shows how the lower basis of fares intrastate in Alabama makes it possible for passengers to defeat the through published interstate fares. It shows that a passenger from Bainbridge, Ga., to Birmingham, Ala., moving via the A. C. L. to Montgomery, Ala., and the L. & N. beyond, pays the one-way interstate coach fare of $6.02. By purchasing a ticket from Bainbridge to Dothan and there rebuying an intrastate ticket to Birmingham, he travels for $4.90, thus saving $1.12. (R. 859.)

On a journey from Thomasville, Ga., to New Orleans, La., via the A. C. L. to Montgomery, Ala., and the L. & N. beyond, the interstate one-way coach fare is $11.55. If a passenger should buy a ticket from Thomasville to Montgomery and there rebuy a ticket from Montgomery to Mobile, and there rebuy a ticket to New Orleans, he can make the trip for $10.69, thus saving 86 cents. (Lynch, R. 641; Exhibit 9, R. 859.)

Exhibits 12, 13, and 14 show numerous illustrations of the manner in which the through interstate fares can be defeated by a passenger purchasing tickets at the the rate of 1.65 cents per mile for the portion of the journey in the State of Alabama. Personal observation is that passengers

are alive to the fact that the interstate fares can be cut by buying and rebuying. (Higgins, R. 659, 665; 185-186; Exhibits 12, 13, 14, R. 861-863.)

Passengers have indulged in the practice of rebuying tickets within Alabama—round-trip tickets within Alabama—in order to defeat a through round trip from a point outside of Alabama to a point in Alabama (Gen, R. 672, 673, 676; Exhibits 12, 13, 14).

SUPPORTING EVIDENCE—KENTUCKY:

With the present differences between interstate and intrastate fares it is possible for a passenger to defeat the interstate fares to and from points in Kentucky by buying an intrastate ticket for part of a trip. For instance, the published interstate one-way coach fare from Somerset, Ky., to St. Louis, Mo., (on basis of 2.2. cents per mile) is $9.28. It is possible to purchase a one-way coach ticket from Somerset, Ky., to Louisville, Ky., at the intrastate rate of $2.35 (made on basis of 1.65 cents per mile) and rebuy or pay cash fare on the trains from Louisville, Ky., to St. Louis, Mo., at interstate fare of $6.27 (2.2 cents per mile) or a total expenditure of $8.62, thereby defeating the through published interstate rate by 66 cents. (Aiken, R. 1149, 1150.)

Exhibit 3 contains 28 additional examples (R. 1276).

It is common knowledge that advantage has been taken of the disparity in fares by interstate passengers buying tickets at the lower intrastate fare to a given point and rebuying from such point, or paying cash fare on trains, to destinations (Aiken, R. 1151).

Possible reductions in interstate fares by purchasing to the point near the state line and rebuying therefrom to destination beyond are shown on Exhibit 5.

The round-trip coach fare from Paducah, Ky., to Cincinnati, Ohio, is $13.80. A passenger could purchase at Paducah a round-trip coach ticket to Louisville, Ky., for $7.48 and at Louisville he could purchase a round-trip coach ticket from Louisville to Cincinnati for $4.80, making his total outlay $12.28. The possible saving is $1.52. (Tucker, R. 1172; Exhibit 5, R. 1280.)

Knows of passengers riding into Cincinnati when they should have gotten off at Ludlow, Ky.; the passengers pay the intrastate fare to Ludlow, Ky., instead of the interstate fare of 2.2 cents per mile to Cincinnati from wherever he starts his journey. Conductors have collected from passengers the difference in interstate and intrastate fare. (Tolleson, R. 1191, 1192.)

SUPPORTING EVIDENCE—TENNESSEE:

With the present differences between interstate and intrastate fares, it is possible for a passenger to defeat interstate fares to and from points in Tennessee by buying an intrastate ticket for part of the trip.

Examples of possible reductions of interstate fares by purchasing to the point nearest the state line and rebuying therefrom to interstate destinations:

From	*To*	*Per Mile*		
Nashville, Tenn.	Hickman, Ky.	2.2c	(Interstate)	3.78
Nashville, Tenn.	Woodland Mills, Tenn.	1.65c	(Intrastate)	2.65
Woodland Mills, Tenn.	Hickman, Ky.	2.2c	(Interstate)	.26
	Interstate fare reduced			.87
Nashville, Tenn.	Jackson, Miss.	2.2c	(Interstate)	19.06
Nashville, Tenn.	Memphis, Tenn.	1.65c	(Intrastate)	4.00
Memphis, Tenn.	Jackson, Miss.	2.2c	(Interstate)	4.68
	Interstate fare reduced.			1.38
Chattanooga, Tenn.	Asheville, N. C.	2.2c	(Interstate)	5.32
Chattanooga, Tenn.	Wolf Creek, Tenn.	1.65c	(Intrastate)	3.25
Wolf Creek, Tenn.	Asheville, N. C.	2.2c	(Interstate)	1.06
	Interstate fare reduced			1.01

Johnson City, Tenn.	Dalton, Ga.		2.2c	(Interstate)	5.02
Johnson City, Tenn.	Chattanooga, Tenn.		1.65c	(Intrastate)	3.65
Chattanooga, Tenn.	Dalton, Ga.		2.2c	(Interstate)	.84
	Interstate fare reduced				.53
Nashville, Tenn.	Roanoke, Va.		2.2c	(Interstate)	11.04
Nashville, Tenn.	Bristol, Tenn.		1.65c	(Intrastate)	5.85
Bristol, Tenn.	Roanoke, Va.		2.2c	(Interstate)	3.36
	Interstate fare reduced				1.83
Johnson City, Tenn.		*Via*			
Johnson City, Tenn.	Franklin, Ky.	So. Ry.	2.2c	(Interstate)	8.32
Mitchellville, Tenn.	Mitchellville, Tenn.	TC L&N	1.65c	(Intrastate)	6.45
	Franklin, Ky.		2.2c	(Interstate)	.14
					1.73

(Gaffney, R. 74; Exhibit 2, R. 333.)

It is common knowledge advantage has been taken by interstate passengers buying tickets at the lower intrastate fares to some points and rebuying from such points, or paying cash fares on trains to destination. The condition which permits this does exist but it is difficult to police. (Gaffney, R. 76.)

With the present differences between the intrastate and the interstate fares, it is possible to defeat the published interstate fares to and from points in Tennessee by purchasing an interstate ticket for a part of the trip.

For example, Item 7 of Exhibit 7 shows that the published interstate one-way coach fare from Johnson City to Birmingham is $7.89. It is possible to purchase a one-way coach ticket from Johnson City, Tenn., to Chattanooga, Tenn., at the intrastate fare of $3.65 on basis of 1.65 cents per mile, and repurchase or pay cash fare in the train from Chattanooga to Birmingham at the interstate fare of $3.19 on basis of 2.2 cents per mile, or a total expenditure of $6.84, thus defeating the through published interstate fare by $1.05. Other similar examples are shown in Exhibit 7. These examples could be multiplied many times. (Aiken, R. 198, 199; Exhibit 7, R. 359.)

There is a disposition on the part of travelers to avail themselves of the opportunity of defeating the through rate by buying and rebuying (Aiken, R. 203, 204).

FINDINGS, 258 I. C. C., 147 (R. 26):

An increase in the intrastate fares to the interstate level under existing conditions will not result in any important loss of traffic to other forms of transportation and will produce increased revenue substantially equivalent to those estimated by them.

SUPPORTING EVIDENCE—TENNESSEE:

The increase in fare sought by respondents would produce the increased revenues named in Exhibit 6. The increase would not divert passenger travel to other means of transportation. (Gaffney, R. 193; Aiken, R. 227.)

FINDINGS, 258 I. C. C., 147 (R. 25):

Additional revenue per annum respondents would have received if 2.2 cents were in effect intrastate:

Alabama	*$750,000*
Kentucky	*526,000*
North Carolina	*558,000*
Tennessee	*556,000*

SUPPORTING EVIDENCE—ALABAMA:

Increased fares in Alabama were published to become effective December 1, 1942. Because of the failure of the Alabama Commission to permit the fare of 2.2 cents per mile to become effective, for the four-month period ended with March 31, 1943, the loss of revenue to the carriers operating in Alabama is $250,166. On a yearly basis, the loss would amount to $750,498. (Tassin, R. 708; Exhibit 17, sheet 4, R. 868.)

SUPPORTING EVIDENCE—KENTUCKY:

The revenue that would have accrued to the respondents in the State of Kentucky had the passenger business within the state moved on the same fares as interstate would for the seven months ended June 30, 1943, aggregate $306,951; rated to a year's basis it would be $526,200 (Tassin, R. 1200; Exhibit 6, R. 1284).

The lines operating in Kentucky are in need of additional revenue. Should be no alarm because railroads had an income and not a deficit in 1942. The cumulative deficts 1936 to 1941 were $136,387,862, and it would be necessary to have a dozen years like 1942 to equalize that. (Tassin, R. 1202; Exhibit 6, p. 4, R. 1284.)

SUPPORTING EVIDENCE—TENNESSEE:

Statement 1 of Exhibit 6 shows the actual revenue loss sustained by the Tennessee railroads, individually and collectively, by reason of the Tennessee Commission's action in suspending the revised intrastate fares and ordering their cancellation.

The actual revenue loss for the twelve-month period from October 1, 1942 (the date upon which the revised interstate fares (became effective), to September 30, 1943, was $556,280. During the ten-month period from December 1, 1942 (the proposed effective date of the intrastate tariffs), to September 30, 1943, this loss has amounted to $452,915. For the N. C. & St. L. Ry. the revenue loss for a twelve-month period was $240,215; for Southern Ry. $183,925; and for the L. & N. R. R. $115,718. Such losses are continuing. (Tassin, R. 122; Exhibit 6, R. 339, 341.)

APPENDIX NO. 3.

The following "thirteenth-section" cases involved the standard passenger fares increased under order of I. C. C. dated July 29, 1920, in *Ex Parte 74, Increased Rates, 1920,* 58 I. C. C. 220. Certain states did not approve in some particular for intrastate application. In each instance the lower state fares were ordered increased to the interstate level:

Rates, Fares, and Charges of N. Y. C. R. R. Co., (November 13, 1920) 59 I. C. C. 290.

Intrastate Rates Within Illinois, (November 13, 1920) 59 I. C. C. 350.

Arkansas Rates and Fares, (December 6, 1920) 59 I. C. C. 471.

Minnesota Fares and Charges, (December 8, 1920) 59 I. C. C. 502.

Ohio Rates, Fares, and Charges, (January 10, 1921) 60 I. C. C. 78.

Montana Rates and Fares, (January 11, 1921) 60 I. C. C. 61.

Indiana Rates, Fares, and Charges, (January 28, 1921) 60 I. C. C. 337.

Utah Rates, Fares, and Charges, (February 12, 1921) 60 I. C. C. 388.

Intrastate Rates Within the State of Texas, (February 12, 1921) 60 I. C. C. 421.

Iowa Passenger Fares and Charges, (January 11, 1921) 60 I. C. C. 55.

Michigan Passenger Fares, (January 28, 1921), 60 I. C. C. 245.

Nebraska Rates, Fares, and Charges, (January 27, 1921) 60 I. C. C. 305.

Nevada Rates, Fares, and Charges, (March 8, 1921) 60 I. C. C. 623.

North Dakota Rates, Fares, and Charges, (May 3, 1921) 61 I. C. C. 504.

Arizona Rates, Fares, and Charges, (May 3, 1921) 61 I. C. C. 572.

Kansas Rates, Fares, and Charges, (July 6, 1921) 62 I. C. C. 440.

Surcharge for Sleeping Car Service in Alabama, (June 14, 1921) 62 I. C. C. 153.
Surcharge in Sleeping or Parlor Cars in Georgia, (July 11, 1922) 69 I. C. C. 623.
Surcharge for Sleeping or Parlor Cars in N. C., (October 6, 1925) 102 I. C. C. 537.
Alabama Passenger Fares and Charges, (April 14, 1924) 88 I. C. C. 621.

The following "thirteenth-section" cases grew out of I. C. C.'s order date January 21, 1942, in *Ex Parte 148, Increased Railway Rates, Fares, and Charges, 1942,* 248 I. C. C. 545. State fares were ordered increased to the interstate level.

Rhode Island Commutation Fares, (September 8, 1942) 253 I. C. C. 383, involved commutation fares increased 10 per cent.
Increases in Texas Rates, Fares, and Charges, (December 18, 1942) 253 I. C. C. 723. Involved first-class passenger fares of 3 cents per mile increased 10 per cent.

Alabama Intrastate Fares, Kentucky Intrastate Fares, Tennessee Intrastate Fares, and North Carolina Intrastate Fares, March 2, 1942, 258 I. C. C. 133, ordered increased to interstate level. Now on appeal in Nos. 560 and 574, October Term, 1944.

INDEX

	Page
OPINIONS	1
JURISDICTION	2
STATUTES	2
QUESTIONS PRESENTED	2
STATEMENT	4
PROCEEDINGS IN THE COURT BELOW	10
ARGUMENT	12
I. The order does not contravene constitutional limitations of the Fifth and Tenth Amendments	12
II. The order is within the authority conferred by section 13 of the Interstate Commerce Act	14
III. The order is supported by substantial evidence	14
(a) Substantial evidence supports the finding of reasonableness of the interstate fares	15
(b) Substantial evidence supports the finding as to preference and prejudice	17
(c) Substantial evidence supports the finding of unjust discrimination against interstate commerce	23
IV. The Commission's finding of unjust revenue discrimination against interstate commerce is not invalid on the alleged ground that the total earnings of the carriers from all their traffic have recently risen to a level deemed by appellants to be in excess of a fair return	24
V. In finding that the low intrastate fares operated unjustly to discriminate against interstate commerce, the Commission did not fail to give full consideration to wartime conditions and the stabilization legislation	26
CONCLUSION	29

CASES CITED

	Page
Baltimore & Ohio R. Co. v. I. C. C., 221 U. S. 612	13
Colorado v. United States, 271 U. S. 153	13
Georgia Comm. v. United States, 283 U. S. 765	22
Illinois Comm. v. Thomson, 318 U. S. 675	13
Increased Railway Rates, Fares & Charges, 1942, Ex Parte 148, 248 I. C. C. 545	7, 17
Interstate Commerce Commission v. Goodrich Transit Co., 224 U. S. 194	13
Interstate Commerce Commission v. Jersey City, 322 U. S. 503	28
Napier v. Atlantic Coast Line R. Co., 272 U. S. 605	13
Passenger Fares and Surcharges, 214 I. C. C. 174	17
Shreveport Case, 234 U. S. 342	13
Southern Ry. Co. v. United States, 222 U. S. 20	13
Texas & Pac. Ry. v. Gulf Ry., 270 U. S. 266	13
United States v. Louisiana, 290 U. S. 70	22
United States v. Wrightwood Dairy Co., 315 U. S. 110	13
Vinson v. Washington Gas Light Co., 321 U. S. 489	28
Wickard v. Filburn, 317 U. S. 111	13
Wisconsin R. Comm. v. C., B. & Q. R. R. Co., 257 U. S. 653	13, 17, 18

In the Supreme Court of the United States

OCTOBER TERM, 1944

No. 574

STATE OF ALABAMA, ET AL., APPELLANTS

v.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ET AL.

No. 592

FRED M. VINSON, ECONOMIC STABILIZATION DIRECTOR, BY CHESTER BOWLES, PRICE ADMINISTRATOR, APPELLANT

v.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ET AL.

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF KENTUCKY

BRIEF FOR THE INTERSTATE COMMERCE COMMISSION

OPINIONS

The opinion of the specially constituted District Court (R. 1345), *State of Alabama* v. *United States*, is reported in 56 F. Supp. 478.

The report of the Interstate Commerce Commis-

sion (R. 4–47),[1] *Alabama Intrastate Fares,* is reported in 258 I. C. C. 133.

JURISDICTION

The final decree of the District Court was entered on August 3, 1944 (R. 1362). The petition for appeal was filed and allowed on September 1, 1944 (R. 1365, 1373). The jurisdiction of this Court is invoked under the Urgent Deficiencies Act of October 22, 1913, c. 32, 38 Stat. 208, 220 (28 U. S. C. 47a) and under section 238 of the Judicial Code, as amended February 13, 1925, c. 229, 43 Stat. 938, par. 4 (28 U. S. C. 345). Probable jurisdiction was noted by this Court on November 13, 1944 (R. 1393).

STATUTES

The statutory provisions here pertinent are the same as those in *North Carolina et al.* v. *United States, Interstate Commerce Commission, et al.,* Nos. 560 and 561, and are printed in the Appendix to our brief in that case, pp. 127–130.

QUESTIONS PRESENTED

In proceedings under section 13 (3) and (4) of the Interstate Commerce Act, the Commission

[1] There is a duplication of page numbers at the beginning of Volume I of the Transcript of Record. The first 27 pages reproduce Tennessee's complaint; then the printed pages of the transcript begin again at page numbered 1 and run consecutively thereafter to the end of Volume II. All record references in this brief refer to the latter pages.

found that the interstate passenger coach fare of 2.2 cents per mile, approved in previous proceedings and in effect on interstate traffic generally on all railroads to and from points in Alabama, Tennessee, and Kentucky, was just and reasonable, and that the intrastate coach fare of 1.65 cents per mile, required by state authority and in effect on the same railroads for similar service in Alabama, Tennessee, and Kentucky, caused undue prejudice against interstate passengers and unjust discrimination against interstate commerce.[2] By order dated May 8, 1944 (R. 1–3), the Commission required that the carriers remove this prejudice and discrimination by increasing the intrastate fares in each of the three states to the level of the corresponding interstate fares. The ultimate question presented is whether the court below erred in sustaining the validity of this order. Subordinate questions may be stated as follows:

I. Whether the order contravenes the Fifth or Tenth Amendments.

II. Whether the order exceeds the Commission's authority.

III. Whether the order is supported by substantial evidence.

IV. Whether the Commission's finding of unjust discrimination against interstate commerce, result-

[2] The findings also covered differences between interstate round-trip sleeping and parlor car fares and intrastate fares for similar service in Alabama and Tennessee, as explained in the statement, *infra*, pp. 5–6, footnote 3.

ing from the failure of the intrastate traffic to bear its fair proportionate share of the aggregate revenue needed to maintain adequate and efficient railway transportation service, is invalid on the ground that the earnings of the carriers from all their traffic have recently risen to a point deemed by appellants to be in excess of a fair return.

V. Whether the Commission, in finding that the low intrastate fares operated unjustly to discriminate against interstate commerce, failed to give full consideration to wartime conditions and the stabilization legislation.

STATEMENT

The report and order here involved is the same as in the *North Carolina* case, Nos. 560 and 561. The Statement in our brief in that case has the same general application and effect in the cases of Alabama, Kentucky, and Tennessee. The Alabama, Kentucky, and Tennessee commissions, like the North Carolina commission, denied applications of the carriers to increase intrastate fares to the level of the interstate fares. Alabama and Tennessee, differing from the other two states, also denied applications of the carriers to increase round-trip fares in sleeping and parlor cars to the level of the interstate fares, and the Commission's report herein includes findings that such lower sleeping and parlor car fares caused undue preference and prejudice as between interstate and intrastate passengers and unjust discrimina-

tion against interstate commerce. The order requires the carriers to increase coach, sleeping, and parlor car fares to the level of corresponding interstate fares.[3]

[3] In the *Alabama* and *Tennessee* cases there were involved not only the one-way and round-trip coach fares but also the round-trip fares in Pullmans. In these two states the one-way fares in Pullmans were the same as the corresponding interstate fares, 3.3 cents per mile, but the round-trip fares in Pullmans were 2.475 cents per mile, with a return limit of 30 days, and 2.75 cents per mile, with a return limit of 6 months (R. 21, 23, 90, 577). The order here challenged requires that these lower round-trip fares be increased to the interstate basis, namely, 2.75 cents per mile, return limit 3 months.

The order requires that the intrastate one-way coach fare of 1.65 cents per mile, then in effect in all four states, be increased to the interstate level of 2.2 cents; that the intrastate round-trip coach fares of 1.485 cents per mile, return limit 15 days, and double the one-way fare of 1.65 cents, return limit 60 days, then in effect in all four states, be increased to the interstate level, namely, 180% of the one-way fare of 2.2 cents, or 1.98 cents per mile, return limit 3 months. In all four states the one-way fare in Pullmans was the same as that applying interstate, namely 3.3 cents per mile, and, of course, the order does not touch those fares. In two states—North Carolina and Kentucky—the round-trip fare in Pullmans was the same at that applying interstate, namely 166⅔% of the one-way fare of 3.3 cents, or 2.75 cents per mile, return limit 3 months, and, therefore, the order has no application to those fares; but in the other two states—Alabama and Tennessee—the round-trip fares in Pullmans were lower than the corresponding interstate fares, the intrastate fares being 2.475 cents per mile, return limit 30 days, and 2.75 cents, return limit 6 months, and the order requires that these intrastate fares be put on

As stated in our brief in the *North Carolina* case, most of the southern carriers, in an endeavor to recover some of the passenger traffic lost to busses and private automobiles, voluntarily reduced their coach fares to 1.5 cents a mile, effective December 1, 1933. Here it is important to note that three large southern territory carriers, the Illinois Central, the St. Louis-San Francisco, and the Gulf, Mobile & Ohio, each operating substantial mileage in one or more of the three states of Alabama, Kentucky, and Tennessee, did not at any time reduce their coach fares to 1.5 cents except between points of competition with other southern territory carriers which had experimentally adopted the 1.5-cent fare. These three lines, like the other southern lines, reduced their fares in Pullmans to 3 cents, without a surcharge, but reduced their coach fares only to 2 cents (R. 72).[4] All the reductions here referred to were

---

a parity with the interstate fares for the same service of 2.75 cents per mile, return limit 3 months.

The round-trip fares involved are of small importance in comparison with the one-way fares, and, hereinafter, all fares referred to are one-way fares, unless otherwise indicated.

[4] This is also true of the Chesapeake & Ohio (R. 22) and the Norfolk & Western (R. 23), whose lines are mostly in "official territory," rather than "southern territory"—south of the Ohio River and the line of the Norfolk & Western to Norfolk. But the Chesapeake & Ohio has lines in Kentucky (R. 22), and the Norfolk & Western has about 100 miles of line in North Carolina (R. 23) consisting of branches to Winston-Salem and Durham.

made effective on both interstate and intrastate traffic.

The 10% increase in passenger fares authorized by the original order of January 21, 1942, in *Increased Railway Rates, Fares, and Charges, 1942,* 248 I. C. C. 545, hereinafter called *Ex Parte 148,* applied to the whole country and, of course, resulted in changes of interstate fares to, from, and through Alabama, Kentucky, and Tennessee, as well as North Carolina. In southern territory, this increase resulted in interstate coach fares of 1.65 cents on all lines theretofore offering 1.5-cent coach fares and 2.2 cents on the lines above mentioned which had not gone below the basic 2 cents a mile except where necessary to meet competition. Similar 10% increases were authorized by all state commissions in the South, including the Alabama, Kentucky, and Tennessee commissions, which resulted in intrastate coach fares of 1.65 cents on most lines and of 2.2 cents on the several mentioned, although later these three commissions denied authority to the other lines to increase their intrastate fares above 1.65 cents.

The amendatory order of August 1, 1942, in *Ex Parte 148,* authorizing increase of the interstate coach fares in southern territory to the basis of 2.2 cents then applying elsewhere throughout the country, of course applied to the interstate fares to, from, and through Alabama, Kentucky, and Tennessee, as well as North Carolina. Pursuant to that authorization, the carriers in south-

641260—45——2

ern territory whose coach fares were then 1.65 cents and the three whose coach fares were then 2 cents, raised their coach fares to 2.2 cents on interstate traffic effective October 1, 1942, and thus 2.2 cents became the uniform fare on interstate traffic on all railroads in southern territory as well as elsewhere throughout the country on both interstate and intrastate traffic. All state commissions in the South permitted a similar increase on intrastate traffic except North Carolina and Alabama, Kentucky, and Tennessee. After the 1942 increases in interstate and intrastate fares and denial of carrier applications by Alabama, Kentucky, North Carolina, and Tennessee to increase intrastate fares in those states, the carriers petitioned the Commission, under provisions of section 13 (3) and (4) of the Interstate Commerce Act to provide authority to raise those fares.

The Commission, in response to the carriers' petitions, ordered investigations (R. 448), naming the carriers concerned in each proceeding as respondents, to determine whether the relation between the interstate and the intrastate fares caused violations of section 13 (3) and (4) and, if so, what fares should be prescribed to correct the violations.[5] Alabama hearings were held June

[5] The petition of the carriers in the *Tennessee* case, which is typical, appears at R. 433; the order instituting the investigation in that case, also typical, appears at R. 448. Petitions and orders in the other cases were omitted in printing.

28, 1943 (R. 547–1046). Kentucky hearings were held September 8, 1943 (R. 1140–1340). Tennessee hearings were held December 2, 1943 (R. 56–417). The carriers, the state commissions, the Federal Price Administrator, and other parties appeared at each of these hearings and presented evidence. Briefs were filed in each proceeding and the issues in all four were together argued orally before the Commission. On March 25, 1944, the Commission issued its report, deciding all four cases (R. 4–47), *Alabama Intrastate Fares*, 258 I. C. C. 133. Under full and adequate findings, the Commission found that the difference between the intrastate and the interstate fares caused undue preference and prejudice and unjust discrimination against interstate commerce, in violation of section 13 (3) and (4). Adjustment of the fares to accord to the findings was left to the carriers and the respective state commissions, but the state commissions withheld their consent to such adjustment, after which the order of May 8, 1944, here attacked (R. 1–3) was entered, requiring the respondent carriers in each proceeding to increase their intrastate fares in question to the level of the corresponding interstate fares. The effective date of the order, July 1, 1944, was postponed to August 15, 1944 (R. 1343).

The increased intrastate fares were made effective in each of the three states on August 15, 1944, and have since remained in force.

The historical background of the passenger

fares here involved is fully considered in our brief in the *North Carolina* case under the subheading "Genesis of Disparity," pp. 6–13, and the findings are fully discussed and set forth under the subheading "Summary of Commission's Findings," pp. 13–18. Since these subjects as they are discussed apply with equal force to all four state cases, reference is made to that part of the North Carolina brief without repetition herein.

PROCEEDINGS IN THE COURT BELOW

Complaints in the *Alabama* (R. 506) and *Tennessee* (R., all of Vol. I) cases were filed June 10, 1944, and in the *Kentucky* case (R. 1047) June 12, 1944, all seeking to annul and enjoin the order of May 8, 1944. The Economic Stabilization Director by the Price Administrator intervened in support of each complaint, and the several rail carriers were made parties defendant or intervened in opposition to the complainant of each state in which they were concerned.

The United States filed an answer in each case (R. 420, 532, 1125), in which the allegations of the complaints were neither admitted nor denied, in view of the filing of motions to intervene (R. 1097) and intervening complaints (R. 1098) by the Economic Stabilization Director. Due to this neutral position the United States did not participate in the proceedings before the District Court.

The answers of the Commission (R. 533) al-

leged that the order violated no constitutional rights, was within statutory authority, was supported by substantial evidence, and that a full and fair hearing had been accorded to all parties.

The answers of the intervening rail carriers (R. 540) adopted the answers of the Commission. These carriers filed a motion in each case (R. 1139) to dismiss a part of the complaint of the Economic Stabilization Director, and by order of the court (R. 543–544) the first paragraph of the prayer of the complaint (Paragraph 25, subparagraph numbered "First," R. 1116), and paragraph 17 (R. 1110–1111), together with the affidavit of one Whitnack (R. 1118–1119), and the tables and graph thereto attached (R. 1120–1124), were ordered stricken from the complaint. No complaint is made before this Court because of this action of the court below.[6]

Hearings before the statutory court were held on July 17 and 18, 1944, and the cause was submitted for final decree (R. 544–545). The court entered its findings of fact and conclusions of law August 3, 1944 (R. 1341–1344), with opinion by District Judge Miller (R. 1345–1362), and en-

[6] The answers of the Commission, the answers of the rail carriers, the motions to intervene and intervening complaints of the Stabilization Director, and the motions of the rail carriers to strike parts of the Director's complaints were, respectively, virtually identical in each of the three cases. For this reason only one of each of these documents, to which record references have been given above, was included in the Transcript of Record here.

tered a final decree on the same date sustaining the Commission's order and dismissing the complaints (R. 1362–1363). The appeal to this Court followed.

ARGUMENT

The questions involved in this appeal are in many respects fundamentally similar to those presented in the *North Carolina* case. For this reason, and to avoid unnecessary repetition, the argument in our brief in the *North Carolina* case is adopted as the basis of the argument herein, and this discussion will be largely confined to those points raised by appellants that require separate treatment.

I

The order does not contravene constitutional limitations of the Fifth and Tenth Amendments

Despite the long line of decisions of this Court consistently sustaining Federal power such as that exercised under section 13 of the Interstate Commerce Act, two of the appellants, Kentucky and Tennessee, assert that this order invades state sovereignty and violates rights reserved to the states by the Tenth Amendment. But the Federal power is so thoroughly established that it can hardly be deemed open to question. Where the interstate and intrastate operations of interstate carriers are so interwoven or commingled that the effective regulation of the one requires regulation also of the other, this Court has sustained the Federal

power, as to freight rates, in the *Shreveport* case (234 U. S. 342), and many other cases under the subsequently enacted section 13; passenger fares, *Wisconsin* case (257 U. S. 563) and many others; safety appliances, *Southern Ry. Co.* v. *U. S.*, 222 U. S. 20; hours of service, *B. & O. R. Co.* v. *I. C. C.*, 221 U. S. 612; accounting, *I. C. C.* v. *Goodrich Transit Co.*, 224 U. S. 194; boiler inspection, *Napier* v. *A. C. L. R. Co.*, 272 U. S. 605; extensions of lines, *Tex. & Pac. Ry.* v. *Gulf Ry.*, 270 U. S. 266; abandonment of lines, *Colorado* v. *U. S.*, 271 U. S. 153. See also *Illinois Comm.* v. *Thomson*, 318 U. S. 675, 682; *U. S.* v. *Wrightwood Dairy Co.*, 315 U. S. 110, 118–120, and *Wickard* v. *Filburn*, 317 U. S. 111, 118–129. Cases decided even before the *Wisconsin*, including some of those cited above, the Court there held, left no room for discussion of the constitutionality of section 13.

Appellants submit no new argument upon the subject. See Kentucky brief, pp. 14–17; Tennessee brief, p. 2, which poses the question of contravention of the Tenth Amendment, but does not thereafter submit argument upon the question. Indeed, the argument submitted in brief goes not to the constitutionality of section 13, but merely to the question of proper exercise of authority under that section. We submit that here the authority has been properly exercised.

No argument regarding the Fifth Amendment seems necessary, as it is clear that this order does

not deprive anyone of property without due process of law.

II

The order is within the authority conferred by section 13 of the Interstate Commerce Act

The order here involved, applying to intrastate fares in Alabama, Kentucky, and Tennessee, is identical with the order in the *North Carolina* case. In view of the authorities cited in our brief there, pp. 33–39, we submit that this order, requiring removal of undue preference and prejudice as between persons and unjust discrimination against interstate commerce, is within the authority conferred by section 13 (4), and that this order, supported by findings of the existence of both types of discrimination there forbidden, is sustainable upon the determination of the validity of either of these findings.

III

The order is supported by substantial evidence

In our brief in the *North Carolina*, case, pp. 39–59, we have set out a part, but by no means all, of the evidence supporting the findings in the Commission's report in so far as they apply to that case. While the evidence in these proceedings was developed at separate hearings, in all four the evidence was fundamentally the same, differing only in some of the details. Thus, our statement in the North Carolina brief of the evi-

dence in that case gives a fairly accurate general impression of the evidence in the three cases here involved. This fact permits briefer treatment of the subject here.

(a) Substantial evidence supports the finding of reasonableness of the interstate fares

The finding in the Commission's report that the interstate fares to, from, and through points in Alabama, Kentucky, North Carolina, and Tennessee are just and reasonable is supported by evidence in each case sufficient both in detail and in comprehensiveness to embrace not only the fares of the interstate carriers operating in and through these particular states but also the fares of the carriers in southern territory as a whole. It was shown in the Alabama, Kentucky and Tennessee records, as in the North Carolina record, that the 2.2-cent fare was lower than that which prevailed in southern territory on both interstate and intrastate traffic for 25 years prior to December 1, 1933, being lower than the 2.5-cent fare which was in effect for ten years prior to World War I, lower than the 3-cent fare in effect during World War I (i. e., from April 10, 1918 to August 20, 1920), and lower than the 3.6-cent fare in effect from the latter date to November 30, 1933. The 2.5, 3, and 3.6-cent fares were in effect not only in southern territory during the periods mentioned but also elsewhere throughout the United States. (R. 65, Tenn.; R. 552, Ala.; R. 1143, Ky.)

There was also evidence, as in the *North Caro-*

lina case, showing changes in conditions subsequent to the Commission's finding in 1936 that fares of 2 cents in coaches would be reasonable, which tended independently of the evidence and findings in ***Ex Parte 148*** to support the reasonableness of the increase in that fare to 2.2 cents (R. 86, 185, 227, Tenn.; R. 579, 733–734, Ala.; R. 1212–1215 and *passim*, Ky.). It was shown that large expenditures had been made by the carriers in remodeling and air-conditioning passenger equipment (R. 86–87, Tenn.; R. 568–569, Ala.; R. 1156, Tenn.); that expenses had increased because of the expansion in the volume of passenger traffic (R. 86–87, 105–106, Tenn.; R. 567, Ala.; R. 1155, 1186, Ky.); that unusual expenses had resulted from wartime operations, including expedited movement of troop trains (R. 86–88, 106, Tenn.; R. 566, 570–572, Ala.; R. 1155–1157, 1186–1188, Ky.). It was further shown that there had been recent increases in wages (R. 136, 351, Tenn.; R. 717, 878, Ala.; R. 1211, 1294, Ky.); in the cost of materials and supplies (R. 136, 352, Tenn.; R. 717, 879, Ala.; R. 1211, 1295, Ky.); and in taxes (R. 135–136, 351, Tenn.; R. 716–717, 876–877, Ala.; R. 1211, 1293–1294, Ky.). Deficits from passenger operations in the years 1936–1942 were also shown (R. 123–124, 342, Tenn.; R. 712, 714, 869, Ala.; R. 1201–1203, 1284, Ky.).

There were also comparisons of the intrastate coach fares in question with other contemporane-

ous fares for like service (R. 67, 70, 72, Tenn.; R. 553–554, 556, Ala.; R. 1145, 1147, Ky.).

The findings, requirements and authorizations of the Commission in *Passenger Fares and Surcharges,* 214 I. C. C. 174, and in *Ex Parte 148* were also referred to in each record.

The rate comparisons, above referred to, constituting evidence of the greatest probative value in a case of this sort, showed that the 2.2-cent coach fare was contemporaneously in effect on interstate traffic throughout the country and on intrastate traffic in the other 44 states.

We submit, as in the *North Carolina* case, that this evidence and much more which appears in the respective records amply supports the Commission's finding that the present interstate fares in southern territory are just and reasonable.

(b) Substantial evidence supports the finding as to preference and prejudice

In the *Wisconsin* case, *supra,* this Court upheld the Commission's order on the ground of discrimination against interstate commerce but refused to sustain it on the ground of preference and prejudice. That refusal was solely because the evidence failed to show state-wide preference and prejudice. In the present case, the court below (R. 1359) sustained the order here involved upon the ground of discrimination against interstate commerce, in view of which it held that decision of the question of preference and prejudice was

unnecessary. It did not hold that the evidence failed to show the existence of state-wide preference and prejudice, but only that the evidence may or may not support that finding. Our position is that the order, as based on both the findings of preference and prejudice and discrimination against interstate commerce, is supported by substantial evidence, and that the order is valid under either or both of these findings.

Ample evidence supports the Commission's finding of preference in favor of intrastate passengers and prejudice against interstate passengers, who generally ride in the same trains, and often in the same coaches, and receive identical service, where the former pays less than the latter for the same transportation. It is believed that this evidence is of substantial character, quite sufficient to provide the support necessary for the Commission's finding, and provides the evidence which was lacking in the *Wisconsin* case, because of which this Court refused to sustain that order on that ground.

This evidence showing that intrastate and interstate passengers were generally transported upon the same trains and in the same coaches was submitted by witnesses for the respondent rail carriers, experienced operators who obviously knew the conditions generally prevailing in these several states. There is no evidence to show the contrary.

In the Alabama case a number of witnesses,

employed by the State commission, testified as to the difficulties of obtaining seats, particularly upon the through trains operated in that State. This evidence only depicts the crowded conditions of wartime passenger traffic, but does not go to the extent of showing that trains were operated for the exclusive use of interstate passengers, or that trains were not available for the use of intrastate passengers.

In Tennessee effort was made to show that a few of the streamlined trains scheduled comparatively few stops within the State, and were not available for intrastate passengers. Effort was made by all the states to show that streamlined through trains were not available for all or a part of the intrastate traffic. This evidence does not go to the extent of showing that there was any difference in the availability of the service offered by these trains between interstate and intrastate passengers. The only restrictions as to the use of these trains was obviously occasioned by their schedules, designed to transport passengers long distances and with as much speed as possible. For this reason these trains scheduled stops only at the larger centers, and were not available to passengers, either interstate or intrastate, at other points. Because of the short distance across Tennessee north and south, these trains made fewer stops in that State, and for this reason were available at a less number of points in that State than in others. It seems clear

from all the evidence that even the finest and fastest streamlined trains were available in all instances, where those trains scheduled stops, alike to intrastate and interstate passengers.

The Commission record for each of the three states involved in this appeal contains specific evidence showing that intrastate and interstate passengers were intermingled and traveled on the same trains, in the same coaches, and received the same service. It is conceded that the interstate passengers paid, at the time of the hearings, 2.2 cents per mile in coaches, and intrastate passengers paid only 1.65 cents per mile. This evidence was submitted by a number of different witnesses and appears at numerous pages in the records of the several hearings. The brief filed in No. 574 on behalf of the appellees Alabama Great Southern Railway Company et al., in Appendix No. 2, pp. 29–45, sets forth in considerable detail, and separately with reference to each of the three states, portions of this evidence.

Submitted as samples of this evidence are the following: In Alabama the streamlined "Tennessean" operating through the northern end of the State is available for intrastate as well as interstate passengers at and between the four scheduled stops (R. 160). The Central of Georgia Railway makes special effort to accommodate intrastate passengers, and the Seminole Limited, operating between Chicago and Jacksonville transports intrastate passengers between Phenix

City and Birmingham (R. 619). Both interstate and intrastate passengers ride all trains of the Central of Georgia in Alabama (R. 621). The Seaboard Air Line trains make no separation of intrastate and interstate passengers and sometimes, when overcrowded, coach passengers are seated in Pullman cars (R. 632). The Atlantic Coast Line, operating from Montgomery to the Georgia line, provides air-conditioned coaches and the train handles both interstate and intrastate passengers (R. 645). The streamlined "South Wind," over the Atlantic Coast Line, is available for intrastate passengers within Alabama (R. 647). The Gulf, Mobile & Ohio provides substantially the same facilities for intrastate and interstate passengers (R. 669).

In Kentucky interstate and intrastate passengers frequently ride on the same trains and in the same coaches (R. 1149). Southern Railway trains in Kentucky handle both interstate and intrastate passengers, and there is no difference in the service afforded, and operating conditions in Kentucky are similar to operating conditions in other states in the South (R. 1190).

Passenger trains operated in Tennessee carry both interstate and intrastate passengers frequently riding in the same trains and in the same coaches, the intrastate fare being 1.65 cents per mile and the interstate 2.2 cents (R. 73). Rail lines in Tennessee have spent large sums of money in the purchase of new and modernized coaches

and these facilities are available to Tennessee intrastate passengers as well as interstate passengers (R. 87).

The evidence, typical in character,[1] was clearly sufficient to show that interstate and intrastate passengers were intermingled in the same trains and in the same cars on all railroads in these respective states. From this fact and from the further facts that the interstate fare is reasonable, that the intrastate fare is substantially lower than this reasonable interstate fare, and that the circumstances and conditions affecting this interstate and intrastate traffic are substantially similar, it follows that the undue preference and prejudice is state-wide in character, as found by the Commission. There was no contention on the part of the state authorities that, if undue preference and prejudice existed, it was not state-wide. Indeed, the state-wide character of this preference and prejudice is virtually conceded in this Court, in Point V of the statement of points upon which Alabama and Kentucky intend to rely (R. 1383) which contains the assertion that "all intrastate traffic is intermingled in the same trains and sometimes in the same cars as like interstate traffic."

---

[1] In Tennessee, for example, the evidence related largely to the Nashville, Chattanooga & St. Louis Railway as a typical Tennessee line. Cf. *Georgia Comm.* v. *United States*, 283 U. S. 765, 774, and *United States* v. *Louisiana*, 290 U. S. 70, 75, 76, holding that in cases of this character typical evidence is sufficient.

It is respectfully submitted that the finding of preference of intrastate passengers and prejudice against interstate passengers is fully supported by substantial evidence and that the order, in so far as it rests upon this finding, should be sustained.

(c) Substantial evidence supports the finding of unjust discrimination against interstate commerce

Evidence was submitted of audits made for representative periods by the principal respondents in each of the four proceedings showing the estimated amount of additional revenue which the respondent carriers in each of the respective states would have received during those periods if the assailed intrastate fares had been on the interstate level. The estimated amounts, projected over the period of a year, exceeded $750,000 per annum in Alabama, $526,000 in Kentucky, and $556,000 in Tennessee (R. 25). Evidence in this regard was submitted in each case (Tenn., R. 122–123, 341; Ala., R. 707, 868; Ky., R. 1200, 1284). The fact shown by the respective records that there is a great demand for passenger service and that the passenger facilities of the railroads are taxed to their utmost capacity fully supports the conclusion that the increase in the intrastate fares to the generally prevailing interstate level would not discourage patronage, and would not result in any important loss of traffic to other forms of transportation, and that the increase in the intrastate fares would result in increased revenues at least to the extent found

in the report. This evidence supports the Commission's finding (R. 38) that "Respondents' revenues under the lower intrastate fares are less by at least $725,000 per annum in Alabama, $500,000 in Kentucky * * * and $525,000 in Tennessee than they would be if those fares were increased to the level of the corresponding interstate fares"

The losses in these three states, added to the loss of $525,000 in North Carolina, make up a total loss for the four states of $2,275,000 per annum. In other words, the several carriers in these four states, if the lower intrastate fares had been maintained, would have received less revenue in the amount of at least $2,275,000 annually than they would have received if the same traffic had been carried at fares equal to those applying on the same railroads upon interstate passenger traffic. It is obvious that to the extent of this difference the intrastate passenger traffic under the lower intrastate fares, as found by the Commission (R. 38) was not contributing its fair share of the revenues required to enable the carriers to render adequate and efficient transportation service.

IV

The Commission's finding of unjust revenue discrimination against interstate commerce is not invalid on the alleged ground that the total earnings of the carriers from all their traffic have recently risen to a level deemed by appellants to be in excess of a fair return

In our brief in the *North Carolina* case (pp. 84–117) full argument has been submitted in

support of the proposition that intrastate traffic must bear its fair proportionate share of the aggregate revenues needed to enable the carriers to provide adequate and efficient transportation service whether the aggregate revenues from all traffic are low or, during a temporary period of extraordinary traffic volume, are above the fair return level. It is unnecessary to repeat any of that argument here.

Although it was not believed to be of legal significance, it was shown that the rates of return of the North Carolina carriers were not unduly high even when measured by the abandoned standard of fair return under the repealed provisions of the original section 15a. Evidence of record in that case showing rates of return after Federal income taxes for the carriers in the southern region for the 22-year period 1921–1942, referred to on p. 115 of the North Carolina brief, applies equally to the carriers involved in these cases, since these carriers and those serving North Carolina are the principal carriers in southern territory. Here attention is called to evidence showing rates of return during the above-mentioned 22-year period for the carriers serving Tennessee, Alabama, and Kentucky. On p. 344 of the record the rates of return of each of 12 carriers serving Tennessee are given, and it is shown that the average rate of return for those carriers for the years 1921–1942 (1942 being the last full year prior to the Commission's order) was 3.45%.

On p. 881 of the record the rate of return for 14 carriers serving Alabama is given and it is shown that the average rate of return for the years 1921–1942 was 3.24%.

On p. 1286 of the record the rates of return of 7 carriers serving Tennessee for the same period are given and it is shown that the average for the 7 was 4.30%.

These rates of return were all determined by computing the relationship of net railway operating income, that is, after Federal income taxes and other railway tax accruals, to the undepreciated book investment, and while, therefore, these rates may not be accepted as accurate, they do roughly indicate that the actual rates were low.

V

In finding that the low intrastate fares operated unjustly to discriminate against interstate commerce, the Commission did not fail to give full consideration to wartime conditions and the stabilization legislation.

In our brief in the *North Carolina* case, sections V and VI, pp. 84–125, we have discussed the arguments in the brief of the Economic Stabilization Director, which was filed jointly in No. 561, the *North Carolina* case, and Nos. 592, the *Alabama, Kentucky,* and *Tennessee* cases. The Director's underlying argument is the same for all four cases, and, as it is answered somewhat fully in the North Carolina brief, we have only a few general observations to add here.

The argument of the Director is essentially to

the effect that present revenues of rail carriers are sufficient to meet operating costs and to yield a fair return without addition of the increased revenue from the increases in the intrastate fares involved in this proceeding, and that under present revenues the railroads earn in excess of that which the Director conceives to be a fair return. But little or no effort is made by the Director to show whether or not or how the increase of these intrastate fares would affect the efforts to stabilize prices and to avoid inflation. As held by this Court, the proper place for the urging of such a showing is in proceedings before the Interstate Commerce Commission, which is vested with the exclusive authority to decide what is a reasonable revenue. Decision of this question by the Commission cannot be resolved upon the basis solely of the effect upon the stabilization program. The Director appeared in these proceedings at the several hearings, presented the evidence he desired to present, and submitted his views to the Commission. There can be no question but that the Director was fully heard by the Commission and that the Commission gave full consideration to his contentions.

Worthy of particular note is the position of the Director in respect to preference and prejudice. As shown by the records herein, interstate and intrastate passengers travel upon the same trains and in the same cars, the interstate passenger paying approximately one-third more for the

same transportation. That is obviously preference of intrastate passengers and prejudice against the interstate passengers, and the Director does not go so far as to say that such preferences and prejudices should not be removed, or that the Commission should ignore its responsibility in respect thereto, because of the stabilization program.

The court below held (R. 1360–1361), we think correctly, that the opinion of the Director is not mandatory on the Commission. The court's holding is sustained by the decisions cited, *Vinson* v. *Washington Gas Light Co.*, 321 U. S. 489, and *Interstate Commerce Commission* v. *City of Jersey City*, 322 U. S. 503, in which this Court definitely held that the operation of the Emergency Price Control Act does not supersede or prohibit the exercise of Commission authority in respect to transportation matters regulated under the Interstate Commerce Act. These cases clearly indicate that the Stabilization Director has the right to be heard in opposition to such rate increases by the Commission, but that the Commission is under no legal necessity to accept the views of the Director as a substitute for its own.

The general increases in interstate passenger fares and in the intrastate passenger fares in most of the states of the country became effective prior to the Stabilization Act of October 2, 1942. The 2.2-cent coach fares became effective on interstate traffic in the East and the West on Febru-

ary 10, 1942, and in the South on October 1, 1942, and those fares became effective on intrastate traffic in the East and the West on February 10, 1942, or shortly thereafter, and in all states in the South other than the four, on October 1, 1942, or shortly thereafter. The Commission's order here questioned requires the intrastate fares in these four states to be increased to the general level of 2.2 cents in order to remove discriminations in violation of section 13. In these circumstances this increase would not appear to be inconsistent with the stabilization program.

CONCLUSION

For the foregoing reasons it is respectfully submitted that the decree of the court below, sustaining the Commission's order and dismissing the complaints, should be affirmed.

DANIEL W. KNOWLTON,
Chief Counsel,
J. STANLEY PAYNE,
Assistant Chief Counsel,
ALLEN CRENSHAW,
Attorney,
Interstate Commerce Commission.

APRIL 1945.

U. S. GOVERNMENT PRINTING OFFICE 19[illegible]

In the District Court of the United States for the Western District of Kentucky, Louisville Division

Action No. 706

THE STATE OF ALABAMA AND PUBLIC SERVICE COMMISSION, PLAINTIFFS, AND FRED M. VINSON, ECONOMIC STABILIZATION DIRECTOR, BY CHESTER BOWLES, PRICE ADMINISTRATOR, INTERVENOR-PLAINTIFFS

v.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, DEFENDANTS

Action No. 707

THE STATE OF TENNESSEE AND THE RAILROAD AND PUBLIC UTILITIES COMMISSION OF THE STATE OF TENNESSEE, PLAINTIFFS, AND FRED M. VINSON, ECONOMIC STABILIZATION DIRECTOR, BY CHESTER BOWLES, PRICE ADMINISTRATOR, INTERVENOR-PLAINTIFFS

v.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, DEFENDANTS

Action No. 708

COMMONWEALTH OF KENTUCKY AND RAILROAD COMMISSION OF KENTUCKY, PLAINTIFFS, AND FRED M. VINSON, ECONOMIC STABILIZATION DIRECTOR, BY CHESTER BOWLES, PRICE ADMINISTRATOR, INTERVENOR-PLAINTIFFS

v.

UNITED STATES OF AMERICA, DEFENDANTS

614650—44

JURISDICTIONAL STATEMENT BY INTERVENOR-PLAINTIFFS UNDER RULE 12 OF THE REVISED RULES OF THE SUPREME COURT OF THE UNITED STATES

The Intervenor-Plaintiff, the Economic Stabilization Director by the Price Administrator, respectfully presents the following statement disclosing the basis upon which it is contended that the Supreme Court of the United States has jurisdiction upon appeal to review the order and decree in the above-entitled causes sought to be reviewed:

A. STATUTORY PROVISIONS

The statutory provisions believed to sustain the jurisdiction are:

U. S. C., Title 28, Section 47 (Act of October 22, 1913, c. 32, 38 Stat. 220).

U. S. C., Title 28, Section 47a (Act of March 3, 1911, c. 231, 36 Stat. 1150, October 22, 1913, c. 32, 38 Stat. 220).

U. S. C., Title 23, Section 41 (28) (Act of June 18, 1910, c. 309, 36 Stat. 539; as amended March 3, 1911, c. 231, Sec. 207, 36 Stat. 1148; October 22, 1913, c. 32, 28 Stat. 219).

U. S. C., Title 28, Section 44 (Act of October 22, 1913, c. 32, 38 Stat. 220; as amended by Act of February 13, 1925, c. 229, Sec. 1, 43 Stat. 938).

U. S. C., Title 28, Section 345 (Act of March 3, 1891, c. 517, Sec. 5, 26 Stat. 827; as amended January 20, 1897, c. 68, 29 Stat. 492; April 12, 1900, c. 191; Sec. 35, 31 Stat. 85; April 30, 1900, c. 339, Sec. 86, 31 Stat. 158; March 3, 1909, c. 269, Sec. 1, 35 tat. 838;

March 3, 1911, c. 231, Secs. 238, 244, 36 Stat. 1157; January 28, 1915, c. 22, Sec. 2, 38 Stat. 804; February 13, 1925, c. 229, Sec. 1, 43 Stat. 938).

B. THE STATUTE OF A STATE, OR THE STATUTE OR TREATY OF THE UNITED STATES, THE VALIDITY OF WHICH IS INVOLVED

The validity of a statute of a state, or of a statute or treaty of the United States, is not involved. See statement of nature of case below.

C. DATE OF THE JUDGMENT OF DECREE SOUGHT TO BE REVIEWED AND THE DATE UPON WHICH THE APPLICATION FOR APPEAL WAS PRESENTED

The order and decree sought to be reviewed was entered on August 3, 1944. The petition for appeal was presented on September 29, 1944, together with an assignment of errors.

D. NATURE OF CASE AND OF RULINGS BELOW

This Appeal is from a final order and decree of the District Court of the United States for the Western District of Kentucky, entered August 3, 1944, denying Intervenor-Plaintiff's (Appellants') request for an injunction to set aside an order[1] of the Interstate Commerce Commission requiring the Alabama, Kentucky, and Tennessee railroads to maintain and apply passenger fares for intrastate transportation in said States which shall be on bases no lower than the passenger fares presently maintained and applied by said

[1] The Order in question was issued on May 24 1944, as a "Corrected Order," dated May 8, 1944, in Docket No. 29036, *North Carolina Intrastate Coach Fares*, 258 I. C. C. 133; Commissioners Splawn, Aitchison, and Mahaffie dissenting.

railroads for accommodations in interstate application to and from said States. The proceeding before the Commission was instituted by a petition of said railroads under section 13 (4) of the Interstate Commerce Act, following decisions by the plaintiff State commissions refusing to authorize increases in intrastate passenger coach fares from the general basis of 1.65 to 2.2 cents per mile and in Alabama and Tennessee, 30-day, round trips, sleeping and parlor car fares of from 2,475 cents to 2.75 cents per mile, because the railroads had failed to show any present need for the added revenue. The order of the Commission causes a direct and substantial increase in the cost of living and in the costs of many business enterprises in said States.

Appellants intervened as Protestants in the proceeding before both the State and Federal commissions. In the proceedings in the District Court, the Court granted Appellants' motions to intervene, accompanied by complaints (petitions) which allege, among other contentions, that the Commissions had failed or refused to give full effect to wartime conditions and the stabilization legislation, although it was under a duty to do so.

The District Court stated that full consideration had been given to the representations of the Price Administrator in these proceedings; and Appellants do not claim that the Commission denied them any procedural rights. Further, Appellants concur—and stated their concurrence to the District Court—with

the view expressed in the Commission's opinion in this and other cases that the stabilization legislation "made no changes in or additions to the Interstate Appellants pointe dout that this Court itself had charges of common carriers by railroad." But the Appellants pointed out that this Court itself had recognized that, in the administration of the Interstate Commerce Act, the Commission was under a duty to accommodate the application of the statute to other Congressional policies, and in particular was under a duty to give full effect to wartime conditions and the stabilization legislation.

It is Appellants' contention that the facts of record provide no substantial basis in evidence for the Commission's fifth finding, approved by the District Court, that traffic moving under the intrastate fares was not contributing its fair share of the revenue required to enable Respondents to render adequate and efficient transportation service.[2] In its decision, the Commission found that, as a result of wartime conditions, net revenues of said railroads had become extraordinarily high, and the passenger service was earning very substantial profits. Computation of the passenger-operating costs per passenger-carrying car-

[2] Such a finding is essential to a finding of undue, unjust, and unreasonable discrimination against interstate commerce under Section 13 (4) of the Interstate Commerce Act. *Florida* v. *United States*, 282 U. S. 194; 292 U. S. 1. The Commission's order also found prejudice to passengers traveling in interstate commerce, but the District Court did not rule with respect to the correctness of the Commission's finding with respect to this issue.

mile indicates them to be approximately the following for 1942.[3]

	In coaches	In parlor cars and sleeping cars
Southern Region	1.09¢	1.75¢
Kentucky railroads	1.25¢	1.90¢
Tennessee railroads	1.22¢	1.79¢

These costs are to be compared with intrastate coach fares of 1.65 cents per mile and the Alabama and Tennessee 30-day, round-trip, parlor- and sleeping-car fares of 2.475 cents per mile. Hence the Commission's fifth finding (District Court's finding of fact No. 4) must have been predicated on the fact, relied on to sustain the reasonableness of the interstate rates at the level of 2.2 cents per mile in coaches and 2.75 cents per mile in sleeping and parlor cars, that passenger service deficits were incurred prior to 1942. In other words, as the District Court suggested in approving the interstate rates, the Commission looked not to the present but to the past and future in making its determination, and "the proposed increased rates are not based on the need for additional revenue."

[3] These figures were computed from exhibits submitted in the proceedings before the Interstate Commerce Commission in the Alabama, Kentucky, and Tennessee cases, respectively, by multiplying the average revenues per passenger-carrying car-mile by the ratio of passenger-operating expenses to revenues. These approximations are probably too high rather than too low, because, as stated by the Commission in its report, travel in the Southern Region increased 128.5 percent in coaches and 30.2 percent in parlor and sleeping cars for the first ten months of 1943 as compared with the corresponding period of 1942, and also because the operating ratios of expenses to revenues dropped considerably in 1943. The approximation of costs per passenger-mile in coaches is probably too high, because the operating ratio is an average for the passenger service as a whole, while the coach loadings have increased considerably more than for parlor and sleeping cars.

Such reasoning, however, nullifies the Commission's duty to give full effect to wartime conditions and stabilization legislation or to meet the *present* economic crisis. To allow an industry to increase ceiling prices or rates to take advantage of wartime conditions in order to compensate for business losses during peacetime—past or future—is diametrically opposed to the objective of that legislation.

In sharp contrast to the Interstate Commerce Commission's decision is the decision of the three State commissions which considered the issues from a viewpoint consistent with the war stabilization program, and refused to authorize the increases of rates because of the phenominally high net revenues enjoyed by the railroads, and because of their failure to show present need for additional revenue from the increased fares. In so doing, the State commissions gave effect both to section 1 of the Stabilization Act of 1942 (50 U. S. C. App. § 961), which expressly provides for the participation by State and municipal regulatory agencies in the wartime stabilization program, and also to the President's Executive Order No. 9328, section 4, F. R. 4681, which expressly requests all State agencies to disapprove rate increases consistently with the Stabilization Act and other State and Federal legislation.

The case presents the following questions:

(1) Was the Interstate Commerce Commission justified in disregarding wartime considerations and acting instead upon peacetime considerations in overriding an order of the State commissions which, by de-

clining to authorize passenger fare increases not presently necessary, gives full effect to the wartime conditions consistently with the stabilization legislation?

(2) Did the order and decision of the Interstate Commerce Commission constitute an unlawful disregard, in the application of section 13 (4) of the Interstate Commerce Act, of the policy established by Congress in the stabilization legislation?

E. THE QUESTIONS ARE SUBSTANTIAL

The questions involved in this case are of importance to those traveling intrastate between points within the Southern region, not only in Alabama, Tennessee, and Kentucky, but also North Carolina which is taking an appeal from a like District Court decision. Moreover, if the decision by this Court were favorable to these States, possibly other southern state commissions would feel free to require that the carriers reinstate the intrastate fares in effect on September 15, 1942, on the basis of 1.65 cents per mile.

Apart from the effect of the decision on the intrastate fare structures of a number of states, the legal issue is important. While Appellants appreciate that, as this Court has said, the weight to be given the Price Administrator's contentions is for the Commission to determine, they do not suppose that this statement by the Court had the effect of relieving the Commission from its duty to make basic findings supported by substantial evidence, *Florida* v. *United States,* 282 U. S. 194. Yet, if the facts of record

herein do not compel the conclusion that were full effect given to wartime conditions and the stabilization legislation, no increases of fares would be required by the Interstate Commerce Act, then Appellants cannot conceive of any case in which a finding could be made that a proposed increase would contravene the national stabilization policy. Consequently, approval of the Commission's finding in this case would have the effect of denying the sanction of judicial review to the Commission's duty to give full effect to wartime conditions and the stabilization legislation.

F. CASES SUSTAINING JURISDICTION

Interstate Commerce Commission v. *Jersey City*, 321 U. S. 755.

McLean Trucking Co. v. *United States*, 321 U. S. 67.

Southern S. S. Co. v. *National Labor Relations Board*, 316 U. S. 31.

Federal Power Commission v. *National Gas Pipeline Co.*, 315 U. S. 575, 590.

Florida v. *United States*, 282 U. S. 194.

G. DECREE AND OPINION OF THE DISTRICT COURT

Appended to this statement is a copy of the opinion of the District Court and a copy of the decree of said Court sought to be reviewed.

We, therefore, respectfully submit that the Supreme Court of the United States has jurisdiction of the appeal.

FILE COPY

Office - Supreme Court, U. S.
FILED
APR 16 1945
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1944.

No. 592.

FRED M. VINSON, Economic Stabilization Director, by CHESTER BOWLES, Price Administrator, *Appellant*,

v.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, and THE ALABAMA GREAT SOUTHERN RAILROAD COMPANY, ET AL., *Appellees*.

On Appeal From the District Court of the United States for the Western District of Kentucky, Louisville Division.

BRIEF ON BEHALF OF THE ALABAMA GREAT SOUTHERN RAILROAD COMPANY, ET AL., APPELLEES.

W. L. GRUBBS,
E. A. SMITH,
Y. D. LOTT,
H. L. WALKER,
L. L. OLIVER,
F. W. GWATHMEY,
CHARLES CLARK,

Attorneys for Alabama Great Southern Railroad Company, et al., Appellees.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

TABLE OF CONTENTS.

	Page
OPINIONS BELOW	1
JURISDICTION	2
THE STATUTE INVOLVED	3
STATEMENT OF THE CASE	4
ARGUMENT	7
CONCLUSION	12

TABLE OF CASES.

Alabama Intrastate Fares, 258 I. C. C. 133	2, 5
State of Alabama v. United States, 56 F. Supp. 478	1, 2
State of North Carolina v. United States, 56 F. Supp. 606	6

AUTHORITIES.

United States Code, Title 28	
Section 41(28)	2
Sections 43-48	2
Section 45(a)	3
Section 47(a)	2
Section 345	2
United States Code, Title 49	
Section 13(4)	3, 4
Section 13(3) (4)	3, 5
Section 15(1)	3
Section 15a(2)	3
Section 17(19)	2
Emergency Price Control Act of 1942 U. S. Code, Title 50 (56 Stat. 23)	4
National Transportation Policy U. S. Code, Title 49 (54 Stat. 899)	3
Rule of Rate Making U. S. Code, Title 49 (Section 15a(2))	3
Stabilization Act of 1942 U. S. Code, Title 50 (56 Stat. 765)	4

IN THE

Supreme Court of the United States

OCTOBER TERM, 1944.

No. 592.

FRED M. VINSON, Economic Stabilization Director, by CHESTER BOWLES, Price Administrator, *Appellant*,

v.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, and THE ALABAMA GREAT SOUTHERN RAILROAD COMPANY, ET AL., *Appellees*.

On Appeal From the District Court of the United States for the Western District of Kentucky, Louisville Division.

BRIEF ON BEHALF OF THE ALABAMA GREAT SOUTHERN RAILROAD COMPANY, ET AL., APPELLEES.

OPINIONS BELOW.

The opinion of the specially constituted three-judge District Court of the United States for the Western District of Kentucky, Louisville Division, entitled *State of Ala-*

bama v. *United States*, Nos. 706-708, appears in the Record at page 1345; its findings of fact and conclusions of law appear at pages 1341-1343; its decree thereupon entered at page 1362; and officially reported at 56 F. Supp. 478.[1]

The order of the Interstate Commerce Commission which gave rise to the suits in the District Court appears at pages 1-3 of the Record; the report of the Commission upon which said order was made appears in the Record at pages 4-39; and is officially reported at 258 I. C. C. 133, entitled Docket No. 28963, *Alabama Intrastate Fares*.[2] These two papers appear as Exhibits A and B to the Tennessee complaint, No. 707.

JURISDICTION.

The jurisdiction of this Court is invoked under Title 28, United States Code, Sections 47 (a) and 345, wherein a direct appeal to this Court is authorized from a final decree of a District Court of the United States, made pursuant to the provisions of Title 28, United States Code, Sections 41 (28), 43-48, and Title 49, United States Code, Section 17 (19) in a case brought to enjoin, set aside, annul, or suspend an order of the Interstate Commerce Commission, other than for the payment of money.

The rail lines (appellees here), upon whose petitions the Interstate Commerce Commission instituted the three proceedings giving rise to the order here immediately involved,

---

[1] The opinion below is entitled State of Alabama v. United States, but it embraces the suit of that State and its Public Service Commission, Docket No. 706, the suit of the State of Tennessee and its Railroad and Public Utilities Commission, No. 707, and the suit of the Commonwealth of Kentucky and its Railroad Commission, No. 708, consolidated.

[2] The report and subsequent order of the Interstate Commerce Commission embraces four separate proceedings, three of them involving passenger fares within the States of Alabama, Tennessee, and Kentucky, and a fourth involving passenger fares within the State of North Carolina. While there were four separate proceedings, the I. C. C.'s decision was embraced in one report and order covering all four.

duly intervened as parties defendant in the District Court in the three suits therein instituted by said states and their railroad regulatory commissions under authority of Title 28, U. S. C., Section 45a (R. 431, 542, 1136).

The final decree of the District Court was entered on the third day of August, 1944 (R. 1362). The Price Administrator's petition for appeal was presented and allowed on the first day of September, 1944 (R. 1376, 1379). Probable jurisdiction was noted by this Court on the thirteenth day of November, 1944 (R. 1393).

THE STATUTE INVOLVED.

The statute here involved is the Interstate Commerce Act, Part I, as amended; particularly its provisions relating to prescription of reasonable rates (Title 49, U. S. C., Section 15 (1)) for the transportation of persons in the light of what is known as the "rule of rate making" (Title 49, U. S. C., Section 15a (2), 54 Stat. 912), and the "national transportation policy" (Title 49, U. S. C., notes preceding Section 1, 54 Stat. 899); and more especially involved is the application of the Federal statute (Title 49, U. S. C., Section 13 (3) (4)) to remove any unreasonable preference or prejudice as between persons in intrastate and interstate commerce, or any unreasonable discrimination against interstate commerce. These sections of the Act are set out in Appendix A to our brief in No. 560, the appeal of the North Carolina interests.

Section 13(4) immediately involved is here quoted:

> "Whenever in any such investigation the Commission, after full hearing, finds that any such rate, fare, charge, classification, regulation, or practice causes any undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce on the one hand and interstate or foreign commerce on the other hand, or any undue, unreasonable, or unjust discrimination against interstate or foreign commerce, which is hereby forbidden and declared to be unlawful, it shall prescribe the rate, fare, or

charge, or the maximum or minimum, or maximum and minimum, thereafter to be charged, and the classification, regulation, or practice thereafter to be observed, in such manner as, in its judgment, will remove such advantage, preference, prejudice, or discrimination. Such rates, fares, charges, classifications, regulations, and practices shall be observed while in effect by the carriers parties to such proceeding affected thereby, the law of any State or the decision or order of any State authority to the contrary notwithstanding."

Also involved in the Price Administrator's appeal are: Section 302(c) of The Emergency Price Control Act of 1942 (56 Stat. 36; 50 U. S. C., Section 942(c)) and the amendment thereto of October 2, 1942, familiarly known as The Stabilization Act (56 Stat. 765; 50 U. S. C., Section 961). The pertinent parts of these statutes are set out in the argument where we quote from the opinion of Judge Miller speaking for the District Court.

STATEMENT OF THE CASE.

This is a companion appeal to that of the States of Alabama, Tennessee, and Kentucky, No. 574, October Term, 1944, and now pending. It brings up for review the decree (R. 1362) of the statutory three-judge District Court wherein the order (R. 1-3, 4-39) of the I. C. C. was upheld.

The intrastate one-way civilian[3] coach fares within the States of Alabama, Kentucky, and Tennessee were published and maintained at the rate of 1.65 cents per mile and such round-trip fares within such states were on a somewhat lower level.

Rail fares good for round-trip transportation in sleeping cars and chair cars within the States of Alabama and Tennessee were on a lower level than the 3.3-cent-per-mile rate applicable to the one-way fares in sleeping and chair cars.

[3] Confined to "civilian," because the lower charges paid by United States Government for troop movements and the 1.25-cent fares maintained for service men and women traveling on furlough or within thirty days after their discharge from the service are not here involved.

Certain railroads operating within each of these three states filed their appropriate tariffs with the railroad regulatory authorities therein whereby said roads sought to increase their one-way coach fares from 1.65 cents to 2.2 cents per mile and their round-trip coach fares to 1.98 cents per mile, also increasing the round-trip fares good for transportation in sleeping cars and chair cars to 2.75 cents per mile.

The Railroad Commission of Kentucky authorized the 2.75-cent rate for sleeping and chair car round-trip transportation. Otherwise the state authorities suspended said tariffs in each state and after hearing thereon denied the increases sought. (R. 49-Tennessee, R. 855-Alabama, R. 1062-Kentucky.)

Thereupon, the rail lines, which had been denied the increases sought, filed their petitions with the I. C. C. under Section 13 (3) and (4) of the Interstate Commerce Act. Three separate petitions were filed. They were docketed *Alabama Intrastate Fares* No. 28963, *Kentucky Intrastate Fares* No. 29000, and *Tennessee Intrastate Fares* No. 29037.

Separate hearings were had in each of said proceedings, briefs were filed therein, and oral argument had before the I. C. C., the full bench sitting. Identical steps had been taken in respect of the intrastate civilian coach fares within the State of North Carolina. Upon refusal to sanction the increases to 2.2 cents one way and 1.98 cents round trip, a thirteenth-section petition was filed and docketed No. 29036. The North Carolina case was heard before the I. C. C. on oral argument along with the three proceedings here immediately involved.

Following said oral argument, one report was issued covering all four proceedings and entitled *Alabama Intrastate Fares*, dated March 25, 1944, and reported 258 I. C. C. 133-155 (R. 4-47).

A formal order was not entered at the time said report was issued, the I. C. C. saying that in accordance with its practice it left to the respective states the matter of adjust-

ing the intrastate fares to conform to its findings and upon failure so to do consideration would be given to the entry of an appropriate order (p. 155, R. 39). Such readjustment not having been authorized by these states, the I. C. C. entered its order on May 8, 1944 (corrected), wherein it required the rail lines, which it had made respondents in the four thirteenth-section proceedings, to increase their intrastate fares to the level of the interstate fares for such services, which the I. C. C. had prescribed for general application interstate throughout the United States and which had been sanctioned and put into effect in forty-four of the states for intrastate application (R. 1-3).

The state authorities of Alabama, Kentucky, and Tennessee filed their petitions (R. 1, 506, 1047) in the District Court of the United States for the Western District of Kentucky, Louisville Division, wherein they respectively sought to enjoin, set aside, annul, and suspend the order of the I. C. C., dated May 8, 1944 (R. 1-3). A three-judge District Court was convened, pursuant to the provisions of the statute, at Louisville, Ky., on the twentieth day of June, 1944 (R. 410). On call of the three cases, they were tried, argued, considered, and decided as a consolidated case, and upon findings of fact and conclusions of law, together with the Court's opinion, a decree was entered on the third day of August, 1944, denying the relief the complainants sought and dismissing their three complaints, thus upholding the order of the I. C. C. assailed by the three states and their regulatory commissions (R. 1362).

The three states having made their direct appeal to this Court, the same was docketed No. 574, October Term, 1944.

The thirteenth-section proceeding involving the North Carolina fares, heretofore referred to, resulted in a similar effort on the part of the North Carolina interests to enjoin and set aside the order of the I. C. C. A three-judge District Court having dismissed its complaint and upheld the order of the I. C. C. (56 F. Supp. 606), an appeal was taken which has been docketed in this Court as No. 560,

October Term, 1944. The Price Administrator took his separate appeal in the North Carolina case, docketed here No. 561, October Term, 1944.

By appropriate order, it has been directed that the appeals in No. 574 and No. 592 be heard upon oral argument immediately following the oral argument in No. 560 and No. 561 (R. 1393).

ARGUMENT.

The Price Administrator's appeal at bar is a companion appeal to that taken by the States of Alabama, Tennessee, and Kentucky, No. 574. The Price Administrator also took his direct appeal in the North Carolina case which has been docketed No. 561. That appeal, of course, was a companion appeal to that of the North Carolina interests which was docketed No. 560. We have filed separate briefs in all three of those cases. It seems hardly necessary to file a separate one here in No. 592 feeling as we do that we have completely answered the Price Administrator's contentions in our other briefs referred to, and particularly the one filed in No. 561. We are strengthened in that view because the Price Administrator's assignment of error in the case at bar (R. 1377-1378) appears to be the same as his assignment of error in No. 561, and, further, the Price Administrator has filed one brief to cover his appeals in No. 561 and No. 592. However, out of abundant caution, we are filing this short brief in No. 592. By way of argument, we can not do better than borrow the language of Judge Miller, speaking for the three-judge District Court. We thus take the liberty of submitting below exactly what he had to say in disposing of the Price Administrator's contentions before the District Court (R. 1358-1361):

> The Commission found as finding No. 6 that the maintenance of the existing lower intrastate coach fares in Alabama, Tennessee, and Kentucky causes undue, unreasonable and unjust discrimination against interstate commerce, which should be removed by in-

creasing intrastate fares in respective states to the level of the corresponding interstate fare to, from and through such states. The evidence showed that the disparity in rates causes the railroads' revenues to be substantially less than they would be if the intrastate fares were increased to the interstate fare level, and that this disparity is such that passengers destined to points outside the respective states were encouraged to purchase intrastate tickets to points near the state line and then either buy tickets or pay cash for the remainder of the journey, thus using the lower intrastate fare to defeat the higher interstate fare. The two classes of traffic are inextricably intermingled; the same railways and the same cars carry both passengers; the same men operate the train in its intrastate journey and in its interstate journey. Under such conditions the effect of maintaining a materially lower rate intrastate than the reasonable interstate rate necessarily results in intrastate traffic failing to pay a fair proportionate share of the cost, maintenance and operation and is discriminatory against interstate traffic. Wisconsin Railway Commission v. C. B. & Q. R. R. Co. 257 U. S. 563; New York v. United States 257 U. S. 591; United States v. Louisiana 290 U. S. 70; Florida v. United States 292 U. S. 1; Illinois Commerce Commission v. United States 292 U. S. 474. The existence of such discrimination against interstate commerce, regardless of the non-existence of any advantage as between persons or localities is sufficient justification for the Commission to end the disparity by ordering it removed. (R. 1359.)

Petitioners contend that existing rates yield sufficient revenue to constitute a reasonable return to the carriers, that the additional revenue from raising the intrastate rates is not necessary, and that the resulting total revenue will be materially more than the carriers are legally entitled to receive. That may be the result,

at least temporarily. But the proposed increased rates are not based on the need for additional revenue. The proposed increase is for the purpose of removing an unjust discrimination against interstate commerce which the Commission is empowered to do regardless of resulting increased revenues or the non-existence of any need for the same. It may be that later, after the increase has had time to show its effect, a downward revision of both interstate and intrastate rates will be in order to meet this objection. On the other hand, present large revenues flow from abnormal traffic conditions, clearly only temporary in their nature. With the return to normal conditions, including the resumption of strong competition from trucks and busses, the combined returns may not be unreasonable. Rate making is not confined to a consideration of results from a single calendar year or from a temporary abnormal condition. The Supreme Court recently held that the present bulge of war earnings is unreliable for use as a standard. Group of Institutional Investors v. Chicago, Milwaukee, St. P. and P. R. Co. 318 U. S. 523, 543. It is approved administrative practice to consider conditions over a reasonable period of years, to strike an average, in determining a basis for rate making. St. Joseph Stock Yards Co. v. United States 298 U. S. 38, 46-47; South and North Alabama R. Co. v. Railroad Commission 210 Fed. 465, 480. (R. 1360.)

The Economic Stabilization Director and the Price Administrator contend that in addition to the Commission's failure properly to interpret and apply its constitutional and statutory authority to protect interstate commerce from undue burdens from intrastate commerce the Commission has failed to accommodate the exercise of its powers to the congressional policies embodied in the Emergency Price Control Act of 1942 and the Stabilization Act of October 2, 1942, and that

by reason thereof its order of May 8, 1944 is null and void. This brings into consideration the statutory authority under which these interveners attack the order in question and their standing in the proceedings. Section 302(c) of the Emergency Price Control Act of 1942 (50 USCA Section 942(c)) provides:

> "Nothing in this Act shall be construed to authorize the regulation of * * * rates charged by any common carrier or other public utility."

Compare Davies Warehouse Co. v. Bowles 321 U. S. 144. The Emergency Price Control Act was supplemented by the Act of October 2, 1942 which provides:

> "'That no common carrier or other public utility shall make any general increase in its rates or charges which were in effect on September 15, 1942, unless it first gives 30 days notice to the President, or such agency as he may designate, and consents to the timely intervention by such agency before the Federal, State, or Municipal authority having jurisdiction to consider such increase." 50 USCA Section 961.

While this language confers upon the executive the right to notice by the utility and requires the utility's consent that the executive be heard by the regulatory body, yet it has been held that in the absence of a clear legislative mandate to the contrary such interveners do not possess any greater rights than other interveners, and that Congress did not intend to limit in any way the existing power of the Interstate Commerce Commission over rate increases, or to give the Price Administrator any standing to make mandatory demands upon it or to take from it any part of its existing discretion. Vinson v. Washington Gas Company 321 U. S. 489; Interstate Commerce Commission, et al. v. The City of Jersey City et al., U. S. Supreme Court decided May 29, 1944. In the Jersey City case above referred to the Court specifically stated that the

opinion of the Price Administrator is not mandatory on the Commission; that the weight to be given to the Price Administrator's contentions called for an exercise of judgment by the Commission and was for the Commission, not for the Court, to determine; that the Interstate Commerce Commission has the responsibility for maintaining an adequate system of wartime transportation, which is a very intricate problem involving many variable factors and calling for informed, expert and unbiased judgment; and that the decision of such a matter by the Commission is clearly not reviewable by the Court because it thinks differently of the weight which should be accorded by some factors in relation to others. In the hearings now under consideration, the Price Administrator was given the required notice and was afforded the opportunity of introducing evidence and of being heard. The report of the Commission refers to his evidence and to his contentions. He has accordingly had the hearing and consideration that the statute provides. He has no standing now in this Court to complain that because his views and contentions were not adopted by the Commission the Commission's order is void and of no effect. His intervention in the three cases presents no additional question to those already discussed. (R. 1361.)

In our opinion the corrected order of the Interstate Commerce Commission of May 8, 1944, herein complained of, was within the power of the Commission and properly applied the law to its findings of fact; that these findings of fact are supported by substantial evidence; and that the order is accordingly a valid one which this Court is not authorized to review any further than as hereinabove indicated. Accordingly, the injunction prayed for in each case is denied and the respective complaints will be dismissed. (R. 1361.)

CONCLUSION.

After this clear statement from the court below, no further argument is necessary. We do, however, make this observation. It is a matter of common knowledge that in World War I, the Federal government took over the railroads and paid their owners for them. Now, in World War II the situation is just the reverse for the owners of the railroads have been operating them and are continuing to operate them in support of our Nation's prosecution of this war instead of the Federal government paying the railroads. The railroads, under the working of the Federal tax laws, are making substantial payments into the Federal treasury which also is in furtherance of the war effort. Certainly no idea of inflation could possibly flow from the above stated very practical situation. The decree of the Court below should be affirmed.

Respectfully submitted,

W. L. GRUBBS,
E. A. SMITH,
Y. D. LOTT,
H. L. WALKER,
L. L. OLIVER,
F. W. GWATHMEY,
CHARLES CLARK,
Attorneys for Alabama Great Southern Railroad Company, et al., Appellees.

SUPREME COURT OF THE UNITED STATES.

Nos. 574 and 592.—October Term, 1944.

The State of Alabama and Public Service Commission, the State of Tennessee and the Railroad and Public Utilities Commission of the State of Tennessee, Commonwealth of Kentucky and Railroad Commission of Kentucky, Appellants, 574 *vs.* The United States of America, Interstate Commerce Commission and William H. Davis, Economic Stabilization Director, by Chester Bowles, Price Administrator, et al.	On Appeals from the District Court of the United States for the Western District of Kentucky.
William H. Davis, Economic Stabilization Director, by Chester Bowles, Price Administrator, Appellant, 592 *vs.* The United States of America, Interstate Commerce Commission and the Alabama Great Southern Railroad Company, et al.	

[June 11, 1945.]

Mr. Justice Black delivered the opinion of the Court.

The States of Alabama, Tennessee, and Kentucky filed a bill in a federal district court seeking to set aside and enjoin enforcement of an order of the Interstate Commerce Commission. The Federal Economic Stabilization Director, acting through the Price Administrator, was granted the right to intervene. The Commission's order directed that intrastate railroad rates in Alabama, Kentucky, Tennessee and North Carolina, be raised to the level of interstate rates fixed by the Commission.[1] The district court

[1] 258 I. C. C. 133. The state 1.65 cents per mile passenger coach rate was directed to be raised to 2.2 cents per mile. Round trip coach rates were ordered proportionately raised. Sleeping and parlor car intrastate fares in some of the States were also directed to be increased.

declined to enjoin enforcement of the order, 56 Fed. Supp. 478, and the case is here on direct appeal under Section 210 of the Judicial Code.

The issues here are substantially the same as in Nos. 560 and 561, this day decided, which involved the same order of the Commission as it applied to rates in the State of North Carolina. The Commission relied basically on the 1936 rate order, to which we referred in our opinion in the *North Carolina* case. Here also the Commissions of the three states had held hearings and determined that the intrastate rates were adequate in every respect to give the particular railroads involved a sufficient income to compensate them fully for their services and to enable the railroads adequately and efficiently to operate in the State. There was evidence before each of the state Commissions, as there was before the Interstate Commerce Commission, that the railroads were enjoying an unprecedented prosperity and reaping a tremendous harvest of profits from their railroad operations in the state. There was evidence from which the Interstate Commerce Commission could have found that the intrastate passenger rates involved were sufficient to pay each railroad a substantial profit for each mile it carried an intrastate passenger. The findings here possess the same infirmities as those in the *North Carolina* case. It follows that our judgment must be the same.

Because the order of the Commission was not based on adequate findings supported by evidence, the District Court should have declined to enforce the Commission's order. The judgment of the district court is therefore

Reversed.

The CHIEF JUSTICE, Mr. Justice ROBERTS, Mr. Justice REED, and Mr. Justice FRANKFURTER dissent for the reasons stated in the dissent to Nos. 560-61, decided today.